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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 11, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28726; Directorate Identifier 2007–NE–32–AD; Amendment 39–15190; AD 2007–18–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80E1 series turbofan engines with certain part number (P/N) compressor rear frames (CRFs) installed. This AD requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) and air carrier's approved Continued Airworthiness Maintenance Programs (CAMP) to include initial and repetitive eddy current inspections (ECIs) or fluorescent penetrant inspections (FPIs) of the affected CRFs. This AD results from the need to require enhanced inspections of the CF6–80E1 series engine CRFs for cracks. We are issuing this AD to prevent rupture of the CRF, which could result in an under-cowl engine fire.

DATES: This AD becomes effective September 26, 2007.

We must receive any comments on this AD by November 13, 2007.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Robert.green@faa.gov;* telephone (781) 238–7754; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: GE recently reassessed the original basis for certification of the CF6–80E1 series turbofan engine CRFs, using updated techniques and materials. The data revealed that the stresses in critical areas of the CRF are higher than originally calculated. This condition, if not corrected, could result in rupture of the CRF, possibly resulting in an under-cowl engine fire.

FAA's Determination and Requirements of This AD

Although no airplanes that are currently registered in the United States use these CF6–80E1 series turbofan engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other engines of the same type design. We are issuing this AD to prevent rupture of the CRF, which could result in an under-cowl engine fire. This AD requires revisions to the ALS of the manufacturer's ICA and air carrier's approved CAMP to include required ECIs or FPIs of those certain P/N CRFs, for cracks in critical areas.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2007–28726; Directorate Identifier 2007–NE–32–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2007–18–10 General Electric Company: Amendment 39–15190. Docket No. FAA–2007–28726; Directorate Identifier 2007–NE–32–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 26, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80E1A1, CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B model turbofan engines with compressor rear frame (CRF) part numbers (P/Ns) 1520M26G03/G06/G08/G11/G12 installed. These engines are installed on, but not limited to, Airbus Industrie A330 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspections of the CF6–80E1 series turbofan engine CRFs, for cracks. We are issuing this AD to prevent rupture of the CRF, which could result in an under-cowl engine fire.

Compliance

(e) Within the next 30 days after the effective date of this AD, revise GE's Instructions for Continued Airworthiness ALS, and for air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the information in Table 1 and in paragraphs (f) through (i) of this AD.

TABLE 1.—INSPECTION COMPLIANCE SCHEDULE

If CRF P/Ns 1520M26G03/G06/G08/G11/G12 are:	Then initially inspect:	And repetitively inspect:
(1) Operated at a CF6–80E1A3 or CF6–80E1A4/B engine rating.	Before 12,200 cycles-since-new (CSN).	Within every 6,300 cycles-since-last-inspection (CSLI), except that igniter pad holes on CRFs with P/Ns 1520M26G03/G06/G08, must be inspected within every 4,800 CSLI.
(2) Operated at a CF6–80E1A4 engine rating	Before 13,700 CSN	Within every 6,300 CSLI, except that igniter pad holes on CRFs with P/Ns 1520M26G03/G06/G08, must be inspected within every 6,100 CSLI.
(3) Operated at a CF6–80E1A1 or CF6–80E1A2 engine rating.	Before 14,200 CSN	Within every 6,300 CSLI.

Module-Level Inspection of CRFs

(f) For CRF P/Ns 1520M26G03/G06/G08/G11/G12, at module level:

(1) Clean and eddy current inspect (ECI) the locations numbered 3 through 8.

(2) Information on these locations can be found in figure 801, sheets 2, 3, and 4, of CF6–80E1 Engine Manual No. GEK 99376, Section 05–21–01. The remaining engine manual references in this AD are to No. GEK 99376.

(3) Information on cleaning and ECI can be found in CF6–80E1 Engine Manual, Section 72–00–34, COMPRESSOR REAR FRAME ASSEMBLY—INSPECTION 001, Subtask 72–00–34–250–001.

(4) For CRF P/Ns 1520M26G03/G06/G08, clean and fluorescent penetrant inspect (FPI) the locations numbered 1 and 2.

(5) Information on these locations can be found in figure 801, sheet 1, of CF6–80E1 Engine Manual, Section 05–21–01.

(6) Information on cleaning and FPI can be found in CF6–80E1 Engine Manual, Section 72–00–34, COMPRESSOR REAR FRAME ASSEMBLY—INSPECTION 001, Subtask 72–00–34–230–051.

Piece-Part Level Inspection of CRFs

(g) For CRF P/Ns 1520M26G03/G06/G08/G11/G12, at piece-part level:

(1) Clean and FPI the locations numbered 3 through 8.

(2) Information on these locations can be found in figure 801, sheets 2, 3, and 4, of CF6–80E1 Engine Manual, Section 05–21–01.

(3) Information on cleaning and FPI can be found in CF6–80E1 Engine Manual, Section 72–34–01, COMPRESSOR REAR FRAME—INSPECTION 001, Subtask 72–34–01–200–003.

(4) For CRF P/Ns 1520M26G03/G06/G08, clean and FPI the locations numbered 1 and 2.

(5) Information on these locations can be found in figure 801, sheet 1, of CF6–80E1 Engine Manual, Section 05–21–01.

(6) Information on cleaning and FPI can be found in CF6–80E1 Engine Manual, Section 72–34–01, COMPRESSOR REAR FRAME—

INSPECTION 001, Subtask 72–34–01–200–003.

Determining CSN of the Compressor Rear Frame

(h) Air carriers and operators must use engine operating records to determine the CSN of the compressor rear frame. If the number of cycles accumulated since new cannot be established, inspect the CRF within 300 cycles-in-service after the effective date of this AD.

(i) For compressor rear frames that have operated in multiple engine models or thrust ratings, information on correct cycle counting can be found in Method 1 or Method 2 of CF6–80E1 Engine Manual No. GEK 99376, Section 05–11–00, LIFE LIMITS OF ENGINE ROTATING PARTS.

Definition

(j) For the purposes of this AD, piece-part level means that the CRF is removed and disassembled using the disassembly instructions in GE's engine manual.

Alternative Methods of Compliance

(k) You must perform these mandatory inspections using the ALS of the Instructions for Continued Airworthiness and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (l) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) GE CF6–80E1 Engine Manual Temporary Revision (TR) 05–0055, dated July 3, 2007, and CF6–80E1 Engine Manual TR 72–0088, dated July 3, 2007, pertain to the subject of this AD. TR 05–055 adds CRF inspection references to the CRF inspection tables and TR 0088 adds an ECI for the CRF.

(n) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Robert.green@faa.gov;* telephone (781) 238–7754; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(o) None.

Issued in Burlington, Massachusetts, on August 29, 2007.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–17678 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 070827327–7327–01; I.D. 020907E]

RIN 0648–AT62

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Framework Adjustment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Final rule.

SUMMARY: This final rule implements Framework Adjustment 1 (FW 1) to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). FW 1 management measures were developed by the Mid-Atlantic Fishery Management Council (Council) and implements a vessel monitoring system (VMS) requirement for vessels participating in the surfclam and ocean quahog fisheries. The VMS requirement replaces the current telephone-based notification requirement necessary prior to departure on a surfclam or ocean quahog fishing trip and facilitates monitoring of closed areas and state/Federal jurisdictional boundaries. The intent of this action is to implement management measures that will improve the management and enforcement of regulations governing the Atlantic surfclam and ocean quahog fishery in the U.S. Exclusive Economic Zone.

DATES: Effective January 1, 2008.

ADDRESSES: Copies of supporting documents, including the Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis (FRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. A copy of the RIR/FRFA and the small entity compliance guide is also accessible via the Internet at *http://www.nero.noaa.gov/*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Information on the Federal VMS reimbursement program is available from the Pacific States Marine Fisheries Commission, 205 SE Spokane Street, Suite 100, Portland, OR 97202 (Website: *http://www.psmfc.org*, Telephone Number: 503–595–3100, Fax Number: 503–595- 3232).

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, 978–281–9220.

SUPPLEMENTARY INFORMATION:

Background

The Council voted on December 13, 2006, to recommend to NMFS that a VMS requirement for Atlantic surfclam and ocean quahog fishing vessels, including Maine mahogany quahog vessels, be implemented for their respective fisheries. This action was originally approved by the Council as part of Amendment 13 to the FMP in 2003. However, the Council recommended that the Administrator, Northeast Region, NMFS (Regional Administrator) implement a VMS requirement for the fisheries when an economically viable system, tailored to meet the needs of the Atlantic surfclam and ocean quahog fishery, became available to the industry. Three VMS vendors have been approved by NMFS for use in the Northeast Region. The costs of the VMS units have decreased since 2003, so that purchase and installation costs now range from approximately $1,800 to $3,800, and recurring monthly costs range from $25 to $100. As a result of the lower costs, the Council voted in June 2005 to begin the development of a framework adjustment to require the mandatory use of VMS for surfclams and ocean quahogs. The Council held two public meetings, on October 11, 2006, and December 13, 2006, to discuss the management measures contained in FW 1 and, on December 13, 2006, the Council selected and approved the VMS management measures to submit to NMFS for approval and implementation. The Council's approved measures included a provision to delay the effectiveness of the VMS requirement for a period of one year for the limited access permitted Maine mahogany quahog fishery. This

delay is to allow greater time for the participants in the smaller, artisanal fishery in Maine, to comply with the new VMS requirement. NMFS published a proposed rule on March 5, 2007 (72 FR 9719) and requested public comments through April 4, 2007, on the management measures contained in FW 1.

A VMS requirement is necessary for the surfclam and ocean quahog fishery in order to: (1) Eliminate the requirement to notify NMFS Office of Law Enforcement via telephone prior to beginning a fishing trip; (2) facilitate the monitoring of areas closed to fishing due to environmental degradation (e.g., harmful algal blooms and former dump sites); and (3) facilitate the monitoring of borders between state and Federal regulatory jurisdiction. Further rationale and detailed description of the measures in FW 1 is provided in the framework and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received one comment on the proposed rule during the comment period. The comment was in general support of the vessel monitoring requirement contained in FW 1.

Changes from the Proposed Rule

In § 648.15(b), the time and place that a vessel must declare its intended fishing activity via the VMS was changed to clarify that the declaration must be made prior to leaving port. The proposed rule was inconsistent in whether the fishing activity was to be declared prior to departure on a fishing trip or prior to crossing the vessel demarcation line. This revision is consistent with other Northeast VMS fisheries, which require that fishing activity be declared prior to leaving port. This clarification modified the regulatory text in the prohibition section of § 648.14 and the facilitation of enforcement section of § 648.15.

Although not a regulatory change, the VMS purchase and cost estimates that were given in the proposed rule are clarified here. In the preamble of the proposed rule, the VMS purchase and installation costs were stated as between $3,150 and $4,200. However, the IRFA summary section of the proposed rule stated a VMS purchase and installation cost range of from $1,800 to $3,800. The low-end cost of $3,150, in the $3,150 - $4,200 cost range, included an estimated cost for a personal computer that is not sold as a part of the lowest cost VMS unit available. In order to give a full range of the costs associated with the purchase and installation of a VMS unit the greater range of $1,800 to $3,800 was analyzed for the IRFA. The difference in the high-end cost estimates was based upon differing installation cost estimates. Although prices are set by the vendors, and therefore subject to change, the VMS purchase and installation cost estimate range of $1,800 to $3,800 is the most accurate at the time of publication of this final rule.

Classification

This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. The Regional Administrator determined that management measures in FW 1 are necessary for the conservation and management of the surfclam and ocean quahog fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws. This final rule has been determined to be not significant for purposes of Executive Order 12866. A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are contained in the preambles of the proposed and final rules. This action does not duplicate, overlap, or conflict with any other Federal rules.

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the management measures implementing FW 1. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR that were prepared for this action. A summary of the IRFA was published in the Classification section of the proposed rule and is not repeated here. Copies of the IRFA and RIR prepared for this action are available from the Northeast Regional Office (see **ADDRESSES**). A description of why this action was taken, the objectives of, and the legal basis for this rule, are contained in the preamble to the proposed rule and final rule and are not repeated here.

Summary of Issues Raised by the Public Comments in Response to the IRFA

No significant issues related to the IRFA or the economic effects of the proposed rule were raised in the one public comment submitted on the proposed rule.

Description and Estimate of Number of Small Entities to Which this Rule Will Apply

This action applies to federally permitted Atlantic surfclam and ocean quahog commercial fishing vessels. The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding $4.0 million. In 2005, 48 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. In the same year, 32 vessels reported harvesting quahogs in the Maine Mahogany Quahog Zone (MMQZ). Average 2005 gross incomes were $846,186 per surfclam harvester, $728,780 per ocean quahog harvester, and $120,592 per Maine mahogany quahog harvester. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 80 commercial fishing entities thus fall under the SBA size standard for small commercial fishing entities. However, it is important to note that, of the 80 entities active in 2005, 29 are already in compliance with the requirement to have a VMS installed on the fishing vessel. Thus, if all vessels that participated in 2005 continue to fish, only 51 vessels will be required to purchase a VMS unit. Furthermore, as a result of the delay of the VMS requirement for Maine mahogany quahog harvesters, 26 of the 51 vessels would be given an additional year from the effective date of the final rule to comply with the VMS requirement.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

In 2005, there were approximately 5,580 fishing trips taken by 80 vessels across all surfclam and ocean quahog permit categories. Thus, the VMS fishing trip declaration requirement should, on average, result in almost 70 trip declarations per year per vessel. Based on 2005 fishery participation levels, it is estimated that 51 fishing vessels (25 vessels in the first year and 26 in the second year of implementation) will be required to purchase and install a VMS unit to comply with this final rule. The purchase and installation costs for a VMS unit range from $1,800 to $3,800, with annual service fees between $360 and $960. A full description of the burden hour estimate and VMS purchase and installation costs for the recordkeeping and reporting requirements of this final rule are given in the Reporting and Recordkeeping Requirements section of this final rule.

Description of Minimization of Economic Impacts on Small Entities

Economic impacts on small entities resulting from the purchase costs of new VMS units have been minimized through a VMS reimbursement program

(July 21, 2006, 71 FR 41425) that made available approximately $4.5 million in grant funds for fiscal year (FY) 2006 for vessel owners and/or operators who have purchased a VMS unit for the purpose of complying with fishery regulations that became effective during or after FY 2006. As of April 3, 2007, an additional $4 million was being added to the fund. Reimbursement for VMS units is available on a first come, first serve, basis until the funds are depleted. More information on the VMS reimbursement program is available from the Pacific States Marine Fisheries Commission (see **ADDRESSES**) and from the NMFS VMS Support Center, which can be reached at 888–219–9228. In addition, all vessels with a limited access Maine mahogany quahog permit would be granted an additional year from the effective date of a final rule implementing FW 1 to come into compliance with the VMS requirement. This additional year is proposed for the Maine mahogany quahog fishery because it operates in an area where shore-based electrical power may not currently be available. Vessel owners in this fishery often moor their vessels away from shore due to lack of shoreside facilities and, when shoreside docking facilities are available, electrical power may not be included. Thus, it is anticipated that this sector will have the additional burden of procuring an auxiliary power system (e.g., an extra battery, photovoltaic cells) in order to comply with the VMS requirement to maintain power to the VMS unit 24 hr per day.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam, ocean quahog, and limited access Maine ocean quahog fishery permits. The guide will also be available on the internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

Reporting and Recordkeeping Requirements

This rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0558. This action eliminates the surfclam/ocean quahog vessel telephone call-in provision included in the collection of information currently approved under OMB Control Number 0648–0202. The new control number, 0648–0558, has been assigned to this new collection until such time that 0648–0202 may be modified. Annualized over a 3–yr period, the direct financial cost to the fishing industry for the purchase, installation, and service of equipment in order to comply with the VMS trip declaration requirement is estimated to be $73,491. For this action the actual reporting burden (e.g., vessel VMS trip declaration) will not change significantly from the telephone call-in provision currently approved under OMB Control Number 0648–0202 because, although the reporting time for each vessel will be reduced, the total number of vessels required to report will increase, due to the inclusion of the Maine mahogany quahog fishery. The vessel owner or operator of a vessel participating in the ITQ program will no longer have to telephone a local port office prior to departure on a surfclam or ocean quahog trip and verbally give the following information: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surfclams or ocean quahogs; expected date, time, and location of landing; and name of individual providing notice. The reporting burden for this requirement was estimated at 2 min per response (OMB Control Number 0648–0202) when the reporting requirement was implemented in 1993 (58 FR 14342, March 17, 1993).

Under this final rule, the vessel owner or operator will be required to make an activity declaration (e.g., surfclam, ocean quahog, or Maine mahogany quahog) displayed on the VMS monitor located in the wheelhouse of the vessel. All identifying information is transmitted as a VMS fishery code. Vessel departure and return information from the fishing trip will be monitored through the VMS by way of the vessel crossing the VMS demarcation line to and from port. On the surfclam and ocean quahog VMS trip declaration screen, vessel operators have three options to choose from: (1) Atlantic surfclam ITQ trip; (2) ocean quahog ITQ trip; and (3) Maine mahogany quahog trip. It is estimated that choosing the appropriate trip declaration will take 1 min per response. As previously noted, in 2005, there were approximately 5,580 fishing trips taken by the entire industry. This makes the time burden for the VMS trip declaration 92 hr per year for the fleet. When considering the time to respond to providing proof of VMS installation and the time needed for requesting an exemption to turn off the VMS unit (''power-down''), the annual reporting burden is 100 hr for the entire fleet. The public's reporting burden for the collection-of information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to the Northeast Regional Administrator (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 5, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR, Chapter IX, Part 902, and 50 CFR, Chapter VI, Part 648 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding, in numerical order, an entry for § 648.81(d) to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
648.15(b)	–0558
* * * *	*

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, definitions for ''Individual Transferable Quota (ITQ) Program'' and ''Mahogany Quahog'' are added in alphabetical order, and the definition for ''Vessel Monitoring System'' is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Individual Transferable Quota (ITQ) Program means, for the Atlantic surfclam and ocean quahog fishery, the annual individual allocation of quota specified at § 648.70.

* * * * *

Mahogany Quahog see *Ocean Quahog*

* * * * *

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, Atlantic herring, and Atlantic surfclam and ocean quahog vessels, as required by this part.

* * * * *

■ 3. In § 648.4, paragraph (a)(4)(ii) is added to read as follows:

§ 648.4 Vessel permits.

(a)* * *

(4)* * *

(ii) *VMS Requirement.* (A) *Surfclam and ocean quahog open access permits.* In order to be eligible for issuance of an open access surfclam or ocean quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. The vessel owner/operator must activate the VMS unit and provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(B) *Maine mahogany quahog limited access permit.* In order to be eligible for issuance of a Maine mahogany quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. By January 1, 2009, unless otherwise exempted under paragraph (a)(4)(ii)(B)(*1*) of this section. The vessel owner/operator must activate the VMS unit and provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(*1*) *Special VMS exemption for Maine mahogany quahog vessels.* Vessel owners eligible to renew a limited access Maine mahogany quahog permit may do so without proof of installation of a VMS, provided the vessel does not fish for, catch, or possess; or attempt to fish for, catch, or posses; Maine mahogany quahogs. Proof of VMS installation must be provided to the NMFS Northeast Region Office of Law Enforcement prior to departure on any fishing trip on which ocean quahogs may be caught or landed. Once a vessel issued a Maine mahogany quahog permit has elected to participate in the Maine mahogany quahog fishery, the vessel must keep the VMS unit turned on and functioning as specified under § 648.9. Once a limited access Maine mahogany quahog permitted vessel has participated in the Maine mahogany quahog fishery, this exemption no longer applies.

(*2*) [Reserved]

* * * * *

■ 4. In § 648.9, paragraphs (c)(2)(i)(B) and (e) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) For vessels fishing with a valid NE multispecies limited access permit, or a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

* * * * *

(e) *New and replacement VMS installations.* The vessel owner/operator required to use a VMS must provide to the NMFS Northeast Region Office of Law Enforcement verification of vendor activation prior to departure on a fishing trip requiring VMS. A VMS certification of installation form is available from the NMFS Regional Administrator. Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying that the new VMS unit is an operational, approved system as described under paragraph (a) of this section. Vessel owners required to use a VMS in the Atlantic surfclam and ocean quahog fishery, as specified at § 648.15(b), must confirm the VMS operation and communications service to NMFS by calling 978–281–9213 to ensure that position reports are automatically sent to and received by NMFS Office of Law Enforcement (OLE). For the Atlantic surfclam and ocean quahog fishery, NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

* * * * *

■ 5. In § 648.10, paragraphs (b)(1)(vii) and paragraph (b)(1)(viii) are added, and (b)(2) is revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vii) A vessel issued a surfclam (SF 1) or an ocean quahog (OQ 6) open access permit;

(viii) Effective January 1, 2009, a vessel issued a Maine mahogany quahog (OQ 7) limited access permit, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*);

* * * * *

(2) The owner of a vessel as specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide

documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all limited access NE multispecies DAS and Atlantic surfclam and ocean quahog permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, certification, and use.

* * * * *

■ 6. In § 648.14, paragraph (a)(25) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(25) Fail to maintain an operational VMS unit as specified in § 648.9, and comply with any of the notification requirements specified in § 648.15(b) including:

(i) Fish for, land, take, possess, or transfer surfclams or ocean quahogs under an open access surfclam or ocean quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a surfclam, ocean quahog, or Maine mahogany quahog fishing activity code via the VMS unit prior to leaving port as specified at § 648.15(b);

(ii) Beginning January 1, 2009, fish for, land, take, possess, or transfer ocean quahogs under a limited access Maine mahogany quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a fishing trip via the VMS unit as specified at § 648.15(b).

* * * * *

■ 7. In § 648.15, paragraph (b) is revised to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(b) *Special notification requirements applicable to surfclam and ocean quahog vessel owners and operators.* (1) *Surfclam and ocean quahog open access permitted vessels.* Vessel owners or operators issued an open access surfclam or ocean quahog open access permit for fishing in the ITQ Program, as specified at § 648.70, are required to declare their intended fishing activity via VMS prior to leaving port.

(2) *Maine mahogany quahog limited access permitted vessels.* Beginning January 1, 2009, vessel owners or operators issued a limited access Maine mahogany quahog permit for fishing for Maine mahogany quahogs in the Maine mahogany quahog zone, as specified at § 648.76, are required to declare via VMS, prior to leaving port, and entering the Maine mahogany quahog zone, their intended fishing activity, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*).

(3) *Declaration out of surfclam and ocean quahog fisheries.* Owners or operators that are transiting between ports or fishing in a fishery other than surfclams and ocean quahogs must either declare out of fisheries or declare the appropriate fishery, if required, via the VMS unit, before leaving port. The owner or operator discontinuing a fishing trip in the EEZ or Maine mahogany quahog zone must return to port and offload any surfclams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(4) *Inspection by authorized officer.* The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

(5) *Authorization for use of fishing trip notification via telephone.* The Regional Administrator may authorize or require the notification of surfclam or ocean quahog fishing trip information via a telephone call to the NMFS Office of Law Enforcement nearest to the point of offloading, instead of the use of VMS. If authorized, the vessel owner or operator must accurately provide the following information prior to departure of his/her vessel from the dock to fish for surfclams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surfclams or ocean quahogs; expected date, time, and location of landing; and name of individual providing notice. If use of a telephone call-in notification is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

* * * * *

■ 8. In § 648.75, paragraph (a) is revised to read as follows:

§ 648.75 Cage identification.

* * * * *

(a) *Tagging.* Before offloading, all cages that contain surfclams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage. A tag is required for every 60 ft^3 (1,700 L) of cage volume, or portion thereof. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by authorized law enforcement agents.

* * * * *

[FR Doc. E7–17898 Filed 9–10–07; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9358]

RIN 1545–BC99

Treatment of Certain Nuclear Decommissioning Funds for Purposes of Allocating Purchase Price in Certain Deemed and Actual Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the allocation of purchase price in certain deemed and actual asset acquisitions under sections 338 and 1060. These regulations affect sellers and purchasers of nuclear power plants or of the stock of corporations that own nuclear power plants.

DATES: *Effective Date:* These regulations are effective September 11, 2007.

Applicability Date: For dates of applicability, see §§ 1.338–6(c)(5)(vi) and 1.1060–1(e)(1)(ii)(C)(*4*).

FOR FURTHER INFORMATION CONTACT: Richard Starke at (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 16, 2004, the IRS and Treasury Department issued a notice of

proposed rulemaking and temporary regulations in the **Federal Register** (69 FR 55740), modifying regulations under sections 338 and 1060 of the Internal Revenue Code (Code). The text of the temporary regulations was identical to the text of the proposed regulations.

Sections 338 and 1060 and the regulations thereunder provide a methodology by which the purchase or sales price in certain actual and deemed asset acquisitions is computed and allocated among the assets acquired or treated as acquired. The regime employs a residual method of allocation that divides assets into seven classes and allocates the consideration to each of the first six classes in turn, up to the fair market value of the assets in the class. The residual amount is allocated to assets in the last class.

The purchase price generally includes liabilities of the seller that are assumed by the purchaser. Those liabilities, however, must be treated as having been incurred by the purchaser. In order to be treated as having been incurred by the purchaser, in addition to other requirements, economic performance must have occurred with respect to the liability.

In connection with the sale of a nuclear power plant, the assets sold by the seller and purchased by the purchaser may include the plant, equipment, operating assets, and one or more funds holding assets that have been set aside for the purpose of satisfying the owner's responsibility to decommission the nuclear power plant after the conclusion of its useful life (the decommissioning liability), and the purchaser may have agreed to satisfy the decommissioning liability. One or more of such funds may not be a fund described in section 468A. Such other funds are referred to as nonqualified funds. Contributions to nonqualified funds do not give rise to a deduction in the year of contribution. In addition, the assets of a nonqualified fund continue to be treated as assets of the contributor.

The preamble to the proposed and temporary regulations concluded that the decommissioning liability will not satisfy the economic performance test until decommissioning occurs, and therefore that, as of the purchase date, it is not included in the purchase price that the purchaser allocates to the acquired assets. As a result, as of the purchase date, the purchase price to be allocated by the purchaser among the acquired assets may be significantly less than the fair market value of those assets. This situation will generally persist until economic performance with respect to the decommissioning liability is satisfied through decommissioning.

Generally under the residual method, the purchase price is allocated to the nonqualified fund's assets, which are typically Class I and Class II assets, before it is allocated to the plant, equipment, and other operating assets, which are typically Class V assets. Because the purchase price does not reflect the decommissioning liability and is first allocated to the assets of the nonqualified fund, the purchase price allocated to the plant, equipment, and other operating assets may be less than their fair market value. To the extent the purchase price allocated to the plant, equipment, and other operating assets is less than their fair market value, the purchaser will not recover a tax benefit (that is, a depreciation deduction) for the decommissioning liability until economic performance occurs on decommissioning.

To mitigate the tax effect of these decommissioning liabilities' not satisfying the statutory requirements for economic performance as to the purchaser, the temporary regulations added § 1.338–6T. That regulation provides that, for purposes of allocating purchase or sales price among the acquisition date assets of a target, a taxpayer may irrevocably elect to treat a nonqualified fund as if such fund were an entity classified as a corporation the stock of which were among the acquisition date assets of the target and a Class V asset. In these cases, for allocation purposes, the hypothetical subsidiary corporation is treated as bearing the responsibility for decommissioning to the extent assets of the fund are expected to be used for that purpose. A section 338(h)(10) election is treated as made for the hypothetical subsidiary corporation (regardless of whether the requirements for a section 338(h)(10) election are otherwise satisfied).

The election converts the assets of the nonqualified fund from primarily Class I and Class II assets into stock of a hypothetical subsidiary corporation which is a Class V asset and allows the present cost of the decommissioning liability funded by the nonqualified fund, which otherwise cannot be taken into account for income tax purposes, to be netted against the fund assets for the sole purpose of valuing the stock of the hypothetical subsidiary corporation. Therefore, if the election is made, it is expected that a larger amount of the initial purchase price would be available to be allocated to the plant and other operating assets than if no such election had been made. However, in such a case, a much smaller amount of the initial purchase price would be available to be allocated to the assets of the nonqualified fund. Accordingly, a disposition of the nonqualified fund assets would likely result in current gain recognition.

Explanation of Provisions and Summary of Comments

A number of comments on the proposed regulations were received, the most significant of which are discussed below. No public hearing was requested nor held.

Economic Performance Test

The preamble to the proposed and temporary regulations discussed application of the economic performance test of section 461 to the assumption of decommissioning liabilities by the purchaser. Various commentators requested that, with respect to the purchaser of a nuclear power plant, the economic performance rules outlined in the proposed and temporary regulations be modified to provide that economic performance with respect to an assumed decommissioning liability be deemed to occur at the time of purchase rather than upon performance of the decommissioning activities. Specifically, commentators pointed out that the election in the proposed and temporary regulations will typically result in the purchaser holding the assets of the nonqualified fund with little or no tax basis, and subsequent investment reallocations undertaken during the course of portfolio management will result in gain recognition and a current tax liability. Further, the commentators noted that nonqualified trust agreements related to nuclear decommissioning obligations often require the trustees to remit to the purchasers, out of trust assets, the monies necessary to pay the purchasers' taxes resulting from the trusts' sales of assets. The commentators expressed concern that this requirement will result in fewer assets in the trust to be used to decommission the nuclear power plant because trustees will be required to either remit taxes from the fund or restrict changes in the fund's investment portfolio.

The IRS and Treasury Department recognize that requiring the purchaser to satisfy the economic performance of a liability assumed in a purchase transaction can result in the deferral of the basis of the acquired assets in the hands of the purchaser. However, this result is not unique to the assumption of decommissioning liabilities and therefore, the economic performance concerns raised by commentators

extend beyond the scope of these regulations. The final regulations adopt the rules provided in the proposed and temporary regulations which are consistent with the application of economic performance rules of section 461 to liabilities assumed by a purchaser.

The Deemed Section 338(h)(10) Election

Several of the commentators urge that, if the IRS and Treasury Department decline to change the position on economic performance, then the final regulations should eliminate the particular result of the § 1.338–6T(c)(5) election set forth in § 1.338–6T(c)(5)(i)(E). That provision deems a section 338(h)(10) election to be made with respect to the hypothetical subsidiary corporation that results from making the § 1.338–6T(c)(5) election. The deemed section 338(h)(10) election operates to eliminate any carryover of the historic basis in the assets in the nonqualified decommissioning fund from the seller to the buyer. The commentators maintain that, as a substitute for the § 1.338–6T(c)(5) election, the parties to the transaction could preserve the historic basis in the assets in the nonqualified fund by having the seller incorporate the nonqualified fund in a new subsidiary with the subsidiary assuming the appropriate portion of the decommissioning obligation long before the sale of the nuclear power plant.

However, simply eliminating the deemed section 338(h)(10) election that results from making the § 1.338–6T(c)(5) election would not necessarily result in the same tax consequences to the parties as a transaction in which the seller incorporated the nonqualified fund in a new subsidiary prior to the sale of the nuclear power plant. The purchase of a subsidiary as opposed to an assumption of the decommissioning liability generally would result in tax accounting differences not only to the buyer but also the seller. Eliminating the deemed section 338(h)(10) election that results from making the § 1.338–6T(c)(5) election would have the effect of essentially accelerating economic performance with respect to an assumed nuclear decommissioning liability in a manner inconsistent with the economic performance rules of other assumed liabilities. Therefore, the final regulations adopt the deemed section 338(h)(10) election rule as provided in § 1.338–6T(c)(5)(i)(E).

Another group of commentators urge that the § 1.338–6T(c)(5) election be made retroactively available prior to September 15, 2004. The allocation rules applicable under sections 338 and 1060 prior to September 15, 2004, however, were comprehensive, and the manner in which they operated was well known to participants in the nuclear power industry. Section 1.338–6T(c)(5) originally was proposed with a prospective effective date, and, while the members of the nuclear power industry at that time urged that § 1.338–6T(c)(5) be made available retroactively, the IRS and Treasury Department declined to do so because transactions negotiated prior to September 15, 2004, would have been based on the rules of § 1.338–6 without inclusion of § 1.338–6T(c)(5). Although the commentators state that the nuclear power industry is very competitive and that some purchasers who purchased nuclear power plants prior to September 15, 2004, might be at a disadvantage relative to those who purchased on or after September 15, 2004, these final regulations are only applicable prospectively so as not to retroactively alter the tax consequences of prior transactions.

Finally, one commentator notes that § 1.338–6T(c)(5)(i)(D) treats the hypothetical subsidiary corporation as bearing responsibility for decommissioning only to the extent that assets of the fund are expected to be used for that purpose (the expected use standard). The commentator argues that proving the expected use of the nonqualified assets might be a contentious issue and prove difficult. The commentator proposes that, for purposes of clarity, the hypothetical subsidiary corporation should be treated as bearing the responsibility for decommissioning in an amount equal to the fair market value of the nonqualified fund assets at the time of the closing of the transaction (causing the stock of the hypothetical subsidiary corporation to be assigned a zero value). The commentator suggests that such an approach would eliminate the uncertainty contained in the expected use standard and ensure that no portion of the purchase price is allocated to the nonqualified assets.

The IRS and Treasury Department believe, however, that the implementation of an approach that does not establish a connection between the fund assets and their expected use may lead to the over funding of nonqualified funds in certain circumstances and inappropriate allocations of basis. Accordingly, the final regulations retain the expected use standard.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and pursuant to 5 U.S.C. 553(d)(3) it has been determined that that a delayed effective date is unnecessary because this rule finalizes currently effective temporary rules regarding the treatment of certain nuclear decommissioning funds for purposes of allocating purchase price in certain acquisitions without substantive change. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will affect sellers and purchasers of nuclear power plants or the stock of corporations that own nuclear power plants in qualified stock purchases, which tend to be larger businesses. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Richard Starke, Office of the Associate Chief Counsel (Corporate).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for Sections 1.338–6T and 1.1060–1T.

Authority: 26 U.S.C. 7805. * * *

■ **Par. 2.** Section 1.338–0 is amended by removing the entry in the list of captions for § 1.338–6T and by revising the entry in the list of captions for paragraph (c)(5) of § 1.338–6 to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–6 Allocation of ADSP and AGUB among target assets.

* * * * *

(c) * * *

(5) Allocation to certain nuclear decommissioning funds.

* * * * *

■ **Par. 3.** Paragraph (c)(5) of § 1.338–6 is amended to read as follows:

§ 1.338–6 Allocation of ADSP and AGUB among target assets.

* * * * *

(c) * * *

(5) *Allocation to certain nuclear decommissioning funds*—(i) *General rule.* For purposes of allocating ADSP or AGUB among the acquisition date assets of a target (and for no other purpose), a taxpayer may elect to treat a nonqualified nuclear decommissioning fund (as defined in paragraph (c)(5)(ii) of this section) of the target as if—

(A) Such fund were an entity classified as a corporation;

(B) The stock of the corporation were among the acquisition date assets of the target and a Class V asset;

(C) The corporation owned the assets of the fund;

(D) The corporation bore the responsibility for decommissioning one or more nuclear power plants to the extent assets of the fund are expected to be used for that purpose; and

(E) A section 338(h)(10) election were made for the corporation (regardless of whether the requirements for a section 338(h)(10) election are otherwise satisfied).

(ii) *Definition of nonqualified nuclear decommissioning fund.* A *nonqualified nuclear decommissioning fund* means a trust, escrow account, Government fund or other type of agreement—

(A) That is established in writing by the owner or licensee of a nuclear generating unit for the exclusive purpose of funding the decommissioning of one or more nuclear power plants;

(B) That is described to the Nuclear Regulatory Commission in a report described in 10 CFR 50.75(b) as providing assurance that funds will be available for decommissioning;

(C) That is not a Nuclear Decommissioning Reserve Fund, as described in section 468A;

(D) That is maintained at all times in the United States; and

(E) The assets of which are to be used only as permitted by 10 CFR 50.82(a)(8).

(iii) *Availability of election.* P may make the election described in this paragraph (c)(5) regardless of whether the selling consolidated group (or the selling affiliate or the S corporation shareholders) also makes the election. In addition, the selling consolidated group (or the selling affiliate or the S corporation shareholders) may make the election regardless of whether P also makes the election. If T is an S corporation, all of the S corporation shareholders, including those that do not sell their stock, must consent to the election for the election to be effective as to any S corporation shareholder.

(iv) *Time and manner of making election.* The election described in this paragraph (c)(5) is made by taking a position on an original or amended tax return for the taxable year of the qualified stock purchase that is consistent with having made the election. Such tax return must be filed no later than the later of 30 days after the date on which the section 338 election is due or the day the original tax return for the taxable year of the qualified stock purchase is due (with extensions).

(v) *Irrevocability of election.* An election made pursuant to this paragraph (c)(5) is irrevocable.

(vi) *Effective/applicability date.* This paragraph (c)(5) applies to qualified stock purchases occurring on or after September 11, 2007. For qualified stock purchases occurring before September 11, 2007 and on or after September 15, 2004, see § 1.338–6T as contained in 26 CFR Part 1 in effect on April 1, 2007. For qualified stock purchases occurring before September 15, 2004, see § 1.338–6 as contained in 26 CFR Part 1 in effect on April 1, 2004.

§ 1.338–6T [Removed]

■ **Par. 4.** Section 1.338–6T is removed.

■ **Par. 5.** Section 1.1060–1 is amended by:

■ 1. Revising in the *Outline of Topics* in paragraph (a)(3), the entry for paragraph (e)(1)(ii)(C).

■ 2. Removing the last sentence of paragraph (c)(3) and adding four new sentences in its place.

■ 3. Revising paragraph (e)(1)(ii)(C).

The revisions read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

(a) * * *

(3) * * *

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(C) Election described in § 1.338–6(c)(5).

* * * * *

(c) * * *

(3) *Certain costs.* * * * If an election described in § 1.338–6(c)(5) is made with respect to an applicable asset acquisition, any allocation of costs pursuant to this paragraph (c)(3) shall be made as if such election had not been made. The preceding sentence applies to applicable asset acquisitions occurring on or after September 11, 2007. For applicable asset acquisitions occurring before September 11, 2007, and on or after September 15, 2004, see § 1.1060–1T as contained in 26 CFR Part 1 in effect on April 1, 2007. For applicable asset acquisitions occurring before September 15, 2004, see §§ 1.338–6 and 1.1060–1 as contained in 26 CFR Part 1 in effect on April 1, 2004.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(C) *Election described in § 1.338–6(c)(5)*—(*1*) *Availability.* The election described in § 1.338–6(c)(5) is available in respect of an applicable asset acquisition provided that the requirements of that section are satisfied. Such election may be made by the seller, regardless of whether the purchaser also makes the election, and may be made by the purchaser, regardless of whether the seller also makes the election.

(*2*) *Time and manner of making election.* The election described in § 1.338–6(c)(5) is made by taking a position on a timely filed original tax return for the taxable year of the applicable asset acquisition that is consistent with having made the election.

(*3*) *Irrevocability of election.* The election described in § 1.338–6(c)(5) is irrevocable.

(*4*) *Effective/applicability date.* This paragraph (e)(1)(ii)(C) applies to applicable asset acquisitions occurring on or after September 11, 2007. For applicable asset acquisitions occurring before September 11, 2007 and on or after September 15, 2004, see § 1.1060–1T as contained in 26 CFR Part 1 in effect on April 1, 2007. For applicable asset acquisitions occurring before September 15, 2004, see §§ 1.338–6 and 1.1060–1 as contained in 26 CFR Part 1 in effect on April 1, 2004.

* * * * *

§ 1.1060–1T [Removed]

■ **Par. 6.** Section 1.1060–1T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Dated: August 31, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–17817 Filed 9–10–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 24

[T.D. TTB–61; Re: T.D. TTB–17]

RIN 1513–AA96

Materials and Processes Authorized for the Treatment of Wine and Juice (2004R–517P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is adopting as a final rule, with minor technical changes, temporary regulations that revised the list of materials authorized for the treatment of wine and juice and the list of processes authorized for the treatment of wine, juice, and distilling material. The regulatory amendments involved the addition of new materials and processes and changes to the limitations on the use of certain approved materials.

DATES: *Effective Date:* September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, Virginia 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

Background

Section 5382 of the Internal Revenue Code of 1986 (26 U.S.C. 5382) provides that proper cellar treatment of natural wine constitutes those practices and procedures that produce a finished product acceptable in good commercial practice. Section 5382 also authorizes the Secretary of the Treasury to prescribe, by regulation, limitations on the use of methods and materials for clarifying, stabilizing, preserving, fermenting, and otherwise correcting wine and juice.

The regulations administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) include, in 27 CFR part 24, provisions that implement these statutory requirements. Section 24.246 of the TTB regulations (27 CFR 24.246) lists materials authorized for the treatment of wine and juice; 27 CFR 24.247 lists materials authorized for the treatment of distilling material; and 27 CFR 24.248 lists processes authorized for the treatment of wine, juice, and distilling materials.

Industry members wishing to experiment with, or commercially use, a treating material or process not specifically authorized in part 24 may file an application with TTB requesting authorization to use the new material or process. Standards regarding the experimental use of a new material or process are set forth in § 24.249 (27 CFR 24.249). The provisions covering applications for commercial use of a new material or process are contained in § 24.250 (27 CFR 24.250). Applications for commercial use must show that the proposed material or process is a cellar treatment consistent with good commercial practice. In general, good commercial practice includes addressing the reasonable technological or practical need to enhance the keeping, stability, or other qualities of the wine, and achieving the winemaker's desired effect but not creating an erroneous impression about the character and composition of the wine.

Publication of Temporary Rule

Over the past few years, TTB received and approved a number of applications for experimental or commercial use of various wine and juice treating materials and processes. TTB concluded that there appeared to be enough analytical data or other information on those materials and processes to add them to the lists of authorized materials and processes contained in §§ 24.246 and 24.248. Since we had already given administrative approval for the use of these materials and processes to some industry members for bottling and sale of wine under § 24.249(e), or for commercial use under § 24.250, we decided to make these additions to the lists through a temporary rule. This would allow domestic winemakers to use these treatments in the production of standard wine, pending final regulatory action, without first having to file an application under § 24.249 or § 24.250.

Accordingly, on November 19, 2004, TTB published in the **Federal Register** (69 FR 67639) a temporary rule, T.D. TTB–17, revising the list of materials authorized for the treatment of wine and juice in § 24.246 and the list of processes authorized for the treatment of wine, juice, and distilling material in § 24.248. TTB also solicited comments from the public on the changes made by T.D. TTB–17. We discuss the submitted comments below under ''Discussion of Comments.''

The temporary rule added materials and processes, or revised existing listings, as follows.

Wine and Juice Treating Materials in § 24.246

Acetaldehyde

Acetaldehyde was added to the list. It is a natural byproduct of yeast metabolism and is used in grape juice to stabilize color prior to concentration. Residual acetaldehyde is removed during the concentration process so that the finished concentrate has no detectable level of acetaldehyde.

Copper Sulfate

Copper sulfate was already listed in § 24.246 for use in removing hydrogen sulfide and other mercaptans from wine. T.D. TTB–17 raised the allowable quantity of copper sulfate from 0.5 to 6 parts per million, but kept the allowable residual level at 0.5 part per million.

Calcium Pantothenate

Calcium pantothenate was added to the list. It is a yeast nutrient used to facilitate the fermentation of apple wine. Calcium pantothenate is a salt of pantothenic acid, one of the B complex vitamins.

Carbohydrase (Pectinase, Cellulase, Hemicellulase) Enzyme

Carbohydrase (pectinase, cellulase, hemicellulase) enzyme was added to the list under enzymatic activity. It is a mixed carbohydrase (pectinase, cellulase, hemicellulase) enzyme preparation derived from a nonpathogenic, nontoxigenic strain of *Aspergillus aculeatus* used to facilitate the separation of juice from fruit. The enzyme disintegrates fruit cell walls, resulting in a quicker and more complete release of juice.

Cellulase Enzyme Preparation

Cellulase (beta-glucanase) was added to the list under enzymatic activity. It is a cellulase enzyme preparation derived from *Tricoderma longibrachiatum* used to facilitate the clarification and filtering of wine. The preparation is best suited to treat wines that are difficult to filter, such as those produced from *Botrytis*-infected grapes.

Lysozyme

Lysozyme was added to the list under enzymatic activity. It is an enzyme, derived from egg white, used to limit malolactic bacterial growth during wine fermentation. Unchecked, malolactic bacterial growth can adversely affect a wine's taste and can halt or slow down fermentation. Lysozyme attacks and degrades the cell walls of gram-positive bacteria, such as *Lactobacillus, Pediococcus,* and *Leuconostoc.* It can greatly reduce the need for sulfur

dioxide, which poses a health hazard to individuals allergic to sulfites.

Milk Products

Pasteurized whole or skim milk was already listed in § 24.246 as authorized for the fining of white grape wine or sherry. T.D. TTB–17 amended this listing to include half-and-half and to allow the fining of all grape wine, while keeping the approved usage rate at 0.2 percent of the volume of wine. T.D. TTB–17 also added as an authorized use the use of these milk products to remove off flavors in wine, subject to a usage rate not to exceed 1 percent of the volume of wine.

Silica Gel (Colloidal Silicon Dioxide)

Silica gel (colloidal silicon dioxide) was already listed in § 24.246 for use in clarifying wine. T.D. TTB–17 added the clarification of juice to its authorized uses, with the limitations on use remaining the same.

Wine Treating Processes in § 24.248

Electrodialysis

Electrodialysis was added to the list for use in removing excess tartrates from wine. The process consists of moving bulk wine past two membranes, one on either side of the wine. One membrane is selectively permeable to tartrate salts and the other, to calcium and potassium salts. As the wine passes between the two membranes, a water-based conductant passes on the other side of both membranes. As both liquids flow through the apparatus, a weak electrical current is introduced to cause the tartrate salts to migrate towards the positively charged membrane and the potassium and calcium salts to migrate toward the negatively charged membrane. As the tartrate, calcium, and potassium salts pass through the membranes, they enter the conductant stream and, when carried out of the apparatus, are discarded.

Metal and Sulfide Reducing Matrix Sheets

Metal and sulfide reducing matrix sheet processes were added to the list. The first of these two types of matrix filter sheets removes metals such as copper and iron from wine, while the second removes sulfides. Both types of sheets contain the active ingredient polyvinylimidazol (PVI), a terpolymer related to polyvinyl-polypyrrolidone (PVPP), already listed as an approved material in § 24.246. The PVI is immobilized in a cellulose matrix sheet and constitutes, at most, 40 percent of the weight of the sheet. Wine is passed through these sheets at a controlled flow rate using conventional filtering methods.

Nanofiltration

Nanofiltration was added to the list. It is used in combination with ion exchange to remove volatile acidity from bulk wine. The wine is drawn into a storage tank where it is pressurized and piped through a mechanical submicron filtration system using nanotechnology. The wine is separated into two streams: The first contains molecules of larger molecular weight, such as flavors, while the second contains molecules of smaller molecular weight, such as alcohol, water, and acetic acid. The second stream is passed through an ion exchange column, which selectively removes the acetic acid and allows the alcohol and water molecules to pass through. Upon exiting the ion exchange column, the second stream is recombined with the first stream.

Osmotic Transport

Osmotic transport was added to the list. It is used to reduce alcohol content in wine. The process involves two liquids, typically water solutions, which have different water vapor pressures. The solution to be treated—the ''feed'' solution—contains volatile components that are soluble or miscible in the receiving solution, or ''stripping'' solution. The membrane must be completely hydrophobic to prevent the stripping solution from passing through the membrane into the feed solution. Wine is pumped along one side of a completely hydrophobic, microporous membrane with water on the other side. The wine and the stripping solution run tangential to, and are separated by, the thin membrane. The difference in vapor pressure of the alcohol in the wine and that of the water-based stripping solution separates the alcohol and the stripping solution. The higher vapor pressure of the alcohol in the wine causes some of the alcohol to evaporate, to pass through the microporous membrane, and then to condense in the water-based stripping solution. The stripping solution is usually circulated across the membrane until the alcohol content of the feed wine and the stripping solution are essentially equal. The process is performed at ambient temperature without elevated pressure, other than just enough pressure to pump the wine. Since the separation of alcohol from a fermented substance is considered to be a distilling process, the new listing specifies that osmotic transport operations must be conducted at a distilled spirits plant premises rather than at a winery.

Discussion of Comments

During the public comment period, which closed on January 18, 2005, TTB received five comments on the temporary rule.

The Enzyme Technical Association commented favorably on the addition of three new enzymes to the list of approved materials and provided additional technical information to support the use of these enzymes in wine. The association also noted two misspellings throughout T.D. TTB–17. The genus name of ''*Aspergillus aculeatus*'' was incorrectly spelled as ''*Aspergilius*''; the species name of ''*Trichoderma longibrachiatum*'' was incorrectly spelled as ''*longibrachiatu.*'' We are correcting the regulatory text in this final rule.

BASF Corporation, which manufactures a product that removes heavy metals and sulfides from alcoholic beverages, submitted a comment requesting that no limit be placed on the amount of copper sulfate that may be added to wine, even though it supported retaining the specification at a residual level of copper sulfate in wine at 0.5 ppm. The commenter further requested that we not require that polyvinylimidazol (PVI), the active material in the sulfide and metal reducing matrix sheets, be used in sheets.

TTB does not have analytical data or other information to assess these requests at this time. We also believe that adoption of such requests should be the subject of public notice and comment procedures. Accordingly, we believe that it would not be appropriate to include them in this final rule document.

TTB received two comments regarding nanofiltration. The first commenter supported adding nanofiltration to the list of approved processes, stating that it has been safely used in several other countries for years. The second commenter opposed adding nanofiltration to the list, stating that it is a subcategory of reverse osmosis, an already approved process. The second commenter also stated that recognizing nanofiltration as a new technology will create confusion in the industry and ''open a can of worms legally'' because of the involved patents.

In response to the opposing comment, we note that while nanofiltration and reverse osmosis may have some operational similarities, they have different uses and limitations for the treatment of wine. TTB believes it is appropriate to list these two items as separate treatments in the regulations. TTB's regulatory intent is to provide

clarity as to what treatments and materials are authorized under 26 U.S.C. 5382, and our decision to list nanofiltration and reverse osmosis separately as wine treatments should not be perceived as a determination or implication regarding the coverage or validity of any patents.

The E. & J. Gallo Winery submitted a comment opposing the regulatory requirement that osmotic transport be conducted at a distilled spirits plant rather than at a bonded winery. The winery stated that this requirement would preclude use of the technology by small wineries and in jurisdictions that do not allow distilling activities. Also, it noted that the alcoholic stripping solution is very low in alcohol, at times lower than 0.5 percent. Further, the commenter pointed out that in T.D. ATF–371, ATF allowed the use of reverse osmosis and ion exchange on bonded winery premises. That Treasury decision, states, in part:

> Normally, reverse osmosis must be done on distilled spirits plant premises because it is considered a distilling process resulting in a distilled spirits by-product. However, in this case, the various components of wine will only be created temporarily in a closed system and will be immediately recombined in-line to reconstitute the original wine minus VA. Consequently, ATF has concluded that this type of reverse osmosis may be conducted on bonded winery premises since no separate distilled spirits product is created as a final product or by-product.

The winery contends that because the stripping solution could be either immediately disposed of or mixed with a wine byproduct, such as lees, it ''would not be accumulated outside the closed system; it would be immediately destroyed or immediately rendered unpotable.''

TTB does not agree that the osmotic transport process is sufficiently similar to the reverse osmosis and ion exchange process cited in T.D. ATF–371 so as to support the commenter's suggestion. The stripping solution is not recombined inline with the wine as in reverse osmosis and ion exchange, but instead is accumulated outside the system. TTB agrees that it may be appropriate in future rulemaking to reexamine the core issue raised in the comment, which is whether TTB should continue to require that processes that separate spirits from wine be conducted only at distilled spirits plants. TTB would give careful consideration to a petition requesting rulemaking on this subject. Such a petition should be addressed to the Administrator, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220.

TTB Finding

After careful review of the comments received, TTB has decided to adopt as a final rule the temporary regulations set forth in T.D. TTB–17, with the spelling corrections discussed above. In addition, we are making a small technical correction to the entry for ''Milk products'' in the table in § 24.246. For the sake of consistency, we are adding the word ''product'' after ''pasteurized milk'' in the ''Reference or limitation'' column.

Inapplicability of the Delayed Effective Date Requirement

Because these regulations relieve a restriction by authorizing additional materials and processes for the treatment of wine and because they are already in effect, it has been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that good cause exists to issue these regulations without a delayed effective date.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation provides greater flexibility to wine producers without imposing any new reporting, recordkeeping, or other administrative requirements. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document was Jennifer K. Berry, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, the temporary rule published in the **Federal Register** at 69 FR 67639 on November 19, 2004, as T.D. TTB–17, is adopted as a final rule with the changes discussed above and set forth below:

PART 24—WINE

■ 1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.246 [Amended]

■ 2. In the table in § 24.246:

■ a. Under the heading for ''Enzymatic activity,'' in the entry for ''Carbohydrase (pectinase, cellulase, hemicellulase),'' in the column headed ''Reference or limitation,'' the word ''*Aspergilius*'' is removed and the word ''*Aspergillus*;'' is added in its place;

■ b. Under the heading for ''Enzymatic activity,'' in the entry for ''Cellulase (beta-glucanase),'' in the column headed ''Reference or limitation,'' the word ''*longibrachiatu*'' is removed and the word ''*longibrachiatum*'' is added in its place; and

■ c. In each entry under ''Milk products,'' in the column headed ''Reference or limitation,'' the word ''product'' is added after the words ''pasteurized milk'' wherever they appear.

Signed: March 14, 2007.

John J. Manfreda,

Administrator.

Approved: March 27, 2007.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

Editorial Note: This document was received at the Office of the Federal Register on September 6, 2007.

[FR Doc. E7–17897 Filed 9–10–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 53

[T.D. TTB–62]

RIN 1513–AB25

Firearms Excise Tax; Exemption for Small Manufacturers, Producers, and Importers (2005R–449P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule amends the regulations administered by the Alcohol and Tobacco Tax and Trade Bureau to reflect the small manufacturers excise tax exemption added by section 11131 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Section 11131 amended section 4182 of the Internal Revenue Code of 1986 to exempt any pistol, revolver, or firearm from excise tax if it was manufactured, produced, or imported by a person who manufactures, produces, or imports less than an aggregate of 50 such articles during the calendar year.

DATES: *Effective Date:* September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Karl O. Joedicke, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210; or e-mail *Karl.Joedicke@ttb.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4181 of the Internal Revenue Code of 1986 (IRC) imposes a tax on the sale of firearms, shells, and cartridges by the manufacturer, producer, or importer. In addition, under section 4218 of the IRC, the use by a manufacturer, producer, or importer of firearms, shells, and cartridges is taxable as if it were a sale, except in limited circumstances. See 27 CFR 53.111 *et seq.* The tax is assessed at the rate of 10 percent of the sale price for pistols and revolvers, 11 percent of the sale price for firearms other than pistols and revolvers, and 11 percent of the sale price for shells and cartridges. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for administering the provisions of the IRC pertaining to the collection of the excise tax on firearms and ammunition. The TTB regulations relating to section 4181 and related provisions of the IRC are contained in part 53 of the TTB regulations (27 CFR part 53).

Exemptions and Legislative Change

Section 4182 of the IRC (26 U.S.C. 4182) provides for certain exemptions from the tax imposed by section 4181. Prior to October 1, 2005, those exemptions covered only sales to the Department of Defense and the Coast Guard (when purchased with funds appropriated for the military department), and transactions where the National Firearms Act Transfer Tax (imposed by IRC section 5811) had been paid. However, on August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144 (the Act). Section 11131 of the Act added a new subsection (c) to IRC section 4182 to exempt any pistol, revolver, or firearm from the tax imposed by section 4181 if it was manufactured, produced or imported by a person who manufactures, produces, or imports less than an aggregate of 50 such articles during the calendar year.

Applicability and Restrictions

The 50-Firearm Limitation

If a person manufactures, produces, or imports 50 or more firearms during the calendar year, he or she would be liable for tax on the first 49 firearms sold, as well as on all additional firearms manufactured, produced, or imported for the remainder of the calendar year, regardless of when they are sold.

Each Calendar Year Stands Alone

The new exemption provision states that the tax under section 4181 does not apply to any pistol, revolver, or firearm described in section 4181 ''if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year.'' Thus, application of this exemption is based on the calendar year in which the manufacture, production, or importation of the articles in question took place and does not depend on when the sale occurs. In addition, each calendar year stands alone for purposes of applying the exemption. The following examples illustrate application of this exemption:

Example 1: Company A manufactures 20 firearms in calendar year 2006 but does not sell any of them in calendar year 2006. Company A then manufactures 40 firearms in calendar year 2007 and sells all 60 firearms (the 20 manufactured in 2006 plus the 40 manufactured in 2007) in 2007. Company A would not owe tax on the 60 firearms sold in 2007 since Company A manufactured only 20 of those firearms in calendar year 2006 and only 40 in calendar year 2007.

Example 2: Company B imports 49 firearms in calendar year 2006, 49 firearms in calendar year 2007, and 20 firearms in calendar year 2008. Company B sells all 118 of these firearms in 2008. Company B would not owe tax on these 118 firearms since Company B imported less than 50 firearms in 2006, less than 50 firearms in 2007, and less than 50 firearms in 2008.

Example 3: Company C manufactures 50 firearms in calendar year 2006, 50 firearms in calendar year 2007, and 20 firearms in 2008. Company C sells all 120 of these firearms in 2009. Company C would be liable for tax on 100 of these firearms (the 50 firearms manufactured in 2006 and the 50 firearms manufactured in 2007, but not the 20 firearms manufactured in 2008).

Controlled Groups

The new statutory provision incorporates the controlled group provisions of IRC section 52(a) and (b) in determining whether the 50-gun exemption applies. Therefore, entities in the same controlled group must aggregate their manufacture, production, and importation figures in making this determination.

Effective Date

The subsection (c) exemption applies only to articles sold by the manufacturer, producer, or importer after September 30, 2005. In this regard, section 11131(b) of the Act includes the following note to 26 U.S.C. 4182:

(2) *No inference.* Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

The 50-gun exemption, therefore, does not affect the tax liability of a manufacturer, producer, or importer with respect to articles sold prior to October 1, 2005.

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the requirements of this Executive Order.

Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date Requirement

Based on the October 1, 2005, effective date of the statutory change in

section 11131, TTB believes it must amend and conform its regulations to the statutory change contained in section 11131 of the Act as soon as practical. Without this regulatory amendment, the existing TTB regulations would not reflect the new tax exemption. Moreover, the regulatory amendment simply restates the requirements arising from the statutory amendment and recognizes an exemption. Therefore, we find that good cause exists to publish this final rule without notice, public comment, or delayed effective date because the regulatory amendment simply reflects the statutory exemption and requirements that are already effective. The promulgation of this regulation without notice, comment, or delayed effective date ensures that affected industry members will have knowledge of the regulatory requirements that will enable them to obtain the benefits of the statutory change. Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(1) and (3), a notice, public comment procedure, and delayed effective date are unnecessary.

Drafting Information

The principal author of this document is Karl O. Joedicke, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 53

Arms and munitions, Electronic funds transfers, Excise taxes, Exports, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ For the reasons discussed in the preamble, title 27, chapter I, part 53 of the Code of Federal Regulations is amended as follows:

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

■ 1. The authority citation for part 53 is revised to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502, 7805.

■ 2. Section 53.62 is amended by adding a new paragraph (c) to read as follows:

§ 53.62 Exemptions.

* * * * *

(c) *Small manufacturers, producers, and importers*—(1) *Exemption.* Section 4182(c) of the Code provides that the tax imposed by section 4181 of the Code shall not attach to any pistol, revolver, or firearm manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of those articles during the calendar year, regardless of when the articles are sold.

(2) *Controlled groups.* All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 of the Code are treated as one person for purposes of paragraph (c)(1) of this section.

(3) *Applicability.* The exemption described in paragraph (c)(1) of this section applies to articles sold by the manufacturer, producer, or importer after September 30, 2005. Application of this exemption is based on the calendar year in which the manufacture, production, or importation of the articles in question took place and does not depend on when the sale occurs. In addition, each calendar year stands alone for purposes of applying the exemption.

Signed: May 9, 2007.

John J. Manfreda,

Administrator.

Approved: July 11, 2007.

Timothy E. Skud,

Deputy Assistant Secretary Tax, Trade, and Tariff Policy.

Editorial Note: This document was received at the Office of the Federal Register on September 6, 2007.

[FR Doc. E7–17901 Filed 9–10–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD05–07–085]

RIN 1625–AA00

Safety Zone; Chesapeake Bay, Susquehanna River, Havre de Grace, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in waters of the Susquehanna River within a 50-yard radius of pier number 5 of the old US-40 Highway bridge (bridge number 1206000). The bridge is located at approximate position latitude 39°33′11″ N, longitude 076°05′09″ W. This safety zone is necessary to provide for the safety of life, property and the environment on navigable waters of the U.S. This safety zone restricts the movement of vessels in a portion of the Susquehanna River, in order to facilitate the marking as a hazard to navigation and the removal of the heavily damaged abandoned masonry bridge pier structure located near Havre de Grace, in Harford County, Maryland.

DATES: This rule is effective from 12 p.m. on August 27, 2007, until 12 p.m. on September 24, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–07–085 and are available for inspection or copying at Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald L. Houck, Waterways Management Division, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to the public interest, because there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels against the hazards associated with a heavily-damaged masonry bridge pier structure located adjacent to the navigation channel and its removal. Such hazards include further damage to the structure by mariners and the possible collapse of the structure with falling stone debris.

Background and Purpose

On August 23, 2007, the Captain of the Port Baltimore, Maryland was notified by the Maryland State Highway Administration that during an inspection of an adjacent highway bridge a contracted bridge inspector noticed that further damage to pier number 5 of the old US-40 Highway bridge (bridge number 1206000) existed three or four days prior. The pier number 5 bridge structure was damaged in May 2005. The bridge pier is among a line of 12 other similar structures crossing the Susquehanna River between Harford County, Maryland and Cecil County, Maryland. Due to the need for vessel control during the marking of the bridge as a hazard to

navigation and the removal of the damaged bridge pier, which is expected to last between two and three weeks, maritime traffic will be temporarily restricted from using the western portion of the navigation channel to provide for the safety of transiting vessels.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on waters of the Susquehanna River within a 50-yard radius of pier number 5 of the old US-40 Highway bridge (bridge number 1206000), located at approximate position latitude 39°33′11″ N, longitude 076°05′09″ W. The temporary safety zone will be effective from 12 p.m. on August 27, 2007, until 12 p.m. on September 24, 2007. The State of Maryland is expected to temporarily establish six orange and white cylindrical regulatory marker buoys with the words ''DANGER KEEP OUT'' during bridge removal operations. This safety zone is needed to control vessel traffic and to enhance the safety of transiting vessels during the marking of the bridge as a hazard to navigation and the removal of the damaged bridge pier, no person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the Susquehanna River outside the safety zone. Additionally, the Captain of the Port will cease enforcement of this zone in the event the removal operations terminate prior to the end of the effective period.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule prevents traffic from transiting a portion of the Susquehanna River during the event, the effect of this rule will not be significant due to the limited size of the safety zone, and the extensive notifications that will be made to the maritime community via marine information broadcasts, so mariners can adjust their plans accordingly. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Susquehanna River from 12 p.m. on August 27, 2007, until 12 p.m. on 24 September 2007. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is limited in size and will only apply to a portion of the Susquehanna River within the western side of the navigation channel. Vessel traffic not constrained by its draft, which small entities usually are, will be able to safely pass around the zone. The Coast Guard will continue to issue maritime advisories, updating the status and progress of the activity, making them widely available to users of the waterway. Additionally, the Captain of the Port will cease enforcement of this zone in the event the removal operations terminate prior to the end of the effective period.

Therefore, Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–085 to read as follows:

§ 165.T05–085 Safety Zone; Chesapeake Bay, Susquehanna River, Havre de Grace, MD.

(a) Location. The following area is a safety zone: All waters located in the Susquehanna River, within a 50-yard radius of pier number 5 of the old US-40 Highway bridge (bridge number 1206000), located at approximate position latitude 39°33′11″ N, longitude 076°05′09″ W (North American Datum 1983).

(b) Regulations. All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at (410) 576–2693 or on marine band radio channel 16 VHF–FM.

(3) All Coast Guard assets enforcing this safety zone can be contacted on marine band radio channels 13 and 16 VHF–FM.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions. The Captain of the Port means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State and local agencies.

(e) Enforcement period. This section will be enforced from 12 p.m. on August 27, 2007, until 12 p.m. on September 24, 2007. In the event removal operations are completed prior to 12 p.m. on September 24, 2007, the Captain of the Port may cease enforcement of this regulation at that time.

Dated: August 27 2007.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E7–17816 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–1023; FRL–8464–8]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a site-specific revision to the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM–10) for Lafarge North America Corporation (Lafarge), Childs Road Terminal located in Saint Paul, Ramsey County, Minnesota. In its December 18, 2006, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain conditions contained in Lafarge's federally enforceable state operating permit (FESOP) into the Minnesota PM SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). We are also taking action on Minnesota's request to revoke the Administrative Order for Lafarge that EPA had previously approved into the Minnesota SIP. The rationale for the approval and other information are provided in this rulemaking action.

DATES: This direct final rule will be effective November 13, 2007, unless EPA receives adverse comments by

October 11, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–1023, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–1023. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information

1. What Is the Background for This Action?

The Lafarge Childs Road Terminal is located at 2145 Childs Road in Saint Paul, Ramsey County, Minnesota. Minnesota originally submitted Administrative Orders for the Lafarge Childs Road Terminal as part of the PM–10 SIP for Ramsey County in 1991 and 1992. These Administrative Orders contain the PM–10 emission limits and operating restrictions imposed on the facility to provide for attainment and maintenance of the PM–10 NAAQS. Subsequent revisions to the Administrative Orders were submitted in 1994 and 1997. The following Lafarge Childs Road Terminal Administrative Order revisions have been approved into the Minnesota PM–10 SIP: (1) Second Amended Findings and Order, dated and effective November 30, 1992, approved into the SIP February 15, 1994 (60 FR 7218); (2) Amendment One to Second Amended Findings and Order, dated and effective December 21, 1994, approved into the SIP June 13, 1995 (60 FR 31088); and, (3) Amendment Two to Second Amended Findings and Order, dated and effective September 23, 1997, approved into the SIP February 8, 1999 (64 FR 5936).

The SIP revision submitted by MPCA on December 18, 2006, consists of a FESOP issued to the Lafarge Childs Road Terminal, which serves as a joint Title I/FESOP document. The PM–10 control measures, recordkeeping and reporting requirements contained in the Administrative Orders previously approved in the PM–10 SIP are now identified as ''Title I condition: SIP for PM–10 NAAQS'' in the joint Title I/FESOP document. The state has requested that EPA approve the following: (1) The inclusion into the Minnesota PM SIP only the portions of Minnesota Air Emission Permit No. 12300391–002, issued to Lafarge North America Corporation—Childs Road Terminal on November 17, 2006, cited as ''Title I condition: SIP for PM–10 NAAQS''; and, (2) that the Administrative Orders for Lafarge—Childs Road Terminal currently included in Minnesota's PM–10 SIP be subsequently revoked.

Minnesota held a public hearing regarding the SIP revision and the joint Title I/FESOP document on November 16, 2006. No comments were received at the public meeting and only EPA provided comments during the 30 day public comment period.

2. Why Is EPA Taking This Action?

EPA is taking this action because: (1) Lafarge has proposed changes to the allowable methods for delivery of cementitious products which require changes to certain SIP conditions; and (2) EPA and the state have agreed to the transfer of SIP requirements from Administrative Orders into joint Title I/Title V–FESOP documents. Further, the state's request provides for attainment and maintenance of the PM–10 National Ambient Air Quality Standards (NAAQS) and satisfies the applicable PM–10 requirements of the Act.

Lafarge receives, transfers, stores, and ships cementitious products. The PM–10 emission sources contained in the SIP for Lafarge include a Barge Aeration Unit, the Vacuum Pump Exhaust and the Silo Storage System. The barge-to-silo operations and related equipment have been removed since the issuance of

the original Administrative Order. Six storage silos remain in operation at Childs Road Terminal for storing cementitious material, with delivery and transport of the material by truck.

Proposed changes to Childs Road Terminal include the installation of a new rail siding for rail delivery of material to the silos, the installation of a related railcar-to-silo pneumatic conveyance, the redesign of the pneumatic conveyance system to allow dedicated use of Silos Nos. 1 and 2, and the installation of new pollution control devices (a low temperature fabric filter) on each of the two dedicated silos. Operation of the remaining Silos Nos. 3–6, also equipped with a fabric filter, remain unchanged with truck unloading.

The original air quality dispersion modeling for the SIP and the initial Administrative Order were based on Lafarge's 1995 annual throughput of material of 120,000 tons per year (tpy). The 2004 annual throughput was 11,280 tons with a 2005 reported annual throughput of 24,454 tons. Annual throughput is expected to increase to 26,600 tpy in 2009 after installation of the proposed changes. Revised air dispersion modeling was conducted using the AERMOD model to ensure continued attainment of the PM–10 NAAQS in the area. Based on the modeling results, the FESOP limits Lafarge to a maximum daily throughput of 1,100 tons per day using a 24-hour rolling average and an annual throughput of 100,000 tpy, using a 12-month rolling average. The modeling analysis also included PM–10 emissions from the nearby Metropolitan Council Environmental Services wastewater treatment plant, in combination with a conservative background concentration, and predicted a 24-hour concentration of 146.2 micrograms per cubic meter ($\mu g/m^3$) and an annual concentration of 41.3 $\mu g/m^3$, therefore demonstrating attainment of the PM–10 NAAQS.

3. What Is a ''Title I Condition?''

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's consolidated permitting regulations, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term ''Title I condition'' which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A ''Title I condition'' is defined as ''any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *.'' The rule also states that ''Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit.'' Further, ''any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.''

Minnesota has also initiated using joint Title I/Title V–FESOP documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V–FESOP documents submitted by MPCA are cited as ''Title I conditions,'' therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the state's procedure for using joint Title I/Title V–FESOP documents to implement site-specific SIP requirements and found it to be acceptable under both titles I and V of the Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from Administrative Orders to joint Title I/Title V–FESOP documents.

II. What Action Is EPA Taking?

EPA is approving into the Minnesota PM–10 SIP a joint Title I/FESOP document which contains certain portions of Minnesota Air Emission Permit No. 12300391–002, issued to Lafarge North America—Childs Road Terminal on November 17, 2006. Specifically, EPA is only approving into the SIP those portions of the joint Title I/FESOP document cited as ''Title I condition: SIP for PM–10 NAAQS.'' In addition, EPA is withdrawing from the Minnesota PM–10 SIP the November 30, 1992, Administrative Order and the December 21, 1994, and September 23, 1997, revisions to the Administrative Order for Lafarge Childs Road Terminal.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective November 13, 2007 without further notice unless we receive relevant adverse written comments by October 11, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 13, 2007.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 29, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for ''Lafarge Corp., Childs Road facility'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of Source	Permit No.	State effective date	EPA approval date	Comments
*	*	*	*	*	*	*
Lafarge North America Corporation, Childs Road Terminal.	12300391–002	11/17/07	9/11/07 [Insert page number where the document begins].	Only conditions cited as ''Title I condition: SIP for PM–10 NAAQS.''
*	*	*	*	*	*	*

* * * * *

[FR Doc. 07–4380 Filed 9–10–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC48

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Catcher Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 2007, through 2400 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 TAC of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA is 1,008 metric tons (mt) as established by § 679.81(a), 679.82(b), and the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), and as posted as the 2007 Rockfish Program Allocations at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm*.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,008 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch for catcher processors participating in the rockfish limited access fishery in the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch for catcher processors participating in the rockfish limited access fishery in the Central GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 5, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 6, 2007.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–4443 Filed 9–6–07; 1:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC43

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for 12 hours for shallow-water species by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to allow the shallow-water species fishery in the GOA to resume.

DATES: Effective 0800 hrs, Alaska local time (A.l.t.), September 6, 2007, through 2000 hrs, A.l.t., September 6, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 21, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *inseason.fakr@noaa.gov* and include in the subject line of the e-mail the document identifier: goaswx4sre.fo.wpd (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The shallow-water fishery in the GOA opened on September 1, 2007 at 1200 hrs and closed on September 1, 2007 at 2400 hrs (72 FR 49229, August 28, 2007). NMFS has determined that approximately 150 mt remain in the fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the shallow-water species fishery in the GOA to resume, NMFS is terminating the previous closure and is reopening directed fishing for shallow-water species for 12 hours by vessels using trawl gear in the GOA, effective 0800 hrs, A.l.t., September 6, 2007, through 2000 hrs, A.l.t., September 6, 2007. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and ''other species.'' This opener does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and

opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 4, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for the shallow-water species fishery in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 21, 2007.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2007.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–4442 Filed 9–6–07; 1:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC47

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish for Catcher Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish for catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of northern rockfish allocated to catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 6, 2007, through 2400 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 TAC of northern rockfish allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA is 675 metric tons (mt) as established by § 679.81(b)(2) and the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), and as posted as the 2007 Rockfish Program Allocations at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm.*

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of northern rockfish allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 675 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish for catcher processors participating in the rockfish limited access fishery in the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish for catcher processors participating in the rockfish limited access fishery in the Central GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 5, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 6, 2007.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–4441 Filed 9–6–07; 1:54 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 175
Tuesday, September 11, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29172; Directorate Identifier 2006–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050, 200, 300, 400, 500, 600, and 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *. Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 11, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–29172; Directorate Identifier 2006–NM–285–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0207, dated July 12, 2006, and EASA Airworthiness Directive 2006–0209, dated July 12, 2006 (corrected September 1, 2006) (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an ''unsafe condition'' as defined in FAA's memo 2003–112–15 ''SFAR 88—Mandatory Action Decision Criteria''. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation

and EASA policy statement mentioned above.

The corrective action includes revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin F27/28–070, dated June 30, 2006; and 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 1, dated January 31, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 24 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,920, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2007–29172; Directorate Identifier 2006–NM–285–AD.

Comments Due Date

(a) We must receive comments by October 11, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F27 Mark 050 airplanes, all serial numbers; and Fokker F27 Mark 200, 300, 400, 500, 600, and 700 airplanes, serial numbers 10102 through 10692; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action includes revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 3 months after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 1, dated January 31, 2006; or Fokker Service Bulletin F27/28–070, dated June 30, 2006; as applicable. For all tasks identified in Report SE–671 or Service Bulletin F27/28–070, the initial compliance times are as specified in Table 1 or Table 2 of this AD, as applicable. The repetitive inspections must be accomplished thereafter at the intervals specified in Report SE–671 or Service Bulletin F27/28–070, as applicable, except as provided by paragraph (f)(3) of this AD.

TABLE 1.—INITIAL COMPLIANCE TIMES FOR ALS REVISION FOR MODEL F27 MARK 050 AIRPLANES

For—	The later of—
Task 280000–01	102 months after the effective of this AD; or 102 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.
Task 280000–02	30 months after the effective of this AD; or 30 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.

TABLE 2.—INITIAL COMPLIANCE TIMES FOR ALS REVISION FOR MODEL F27 MARK 200, 300, 400, 500, 600, AND 700 AIRPLANES

For—	The later of—
Task 280000–01	78 months after the effective of this AD; or 78 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.
Task 280000–02	18 months after the effective of this AD; or 18 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.

(2) Within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Fokker 50/60 Fuel Airworthiness Limitations Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 1, dated January 31, 2006; or Fokker Service Bulletin F27/28–070, dated June 30, 2006; as applicable.

(3) Where Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 1, dated January 31, 2006; or Fokker Service Bulletin F27/28–070, dated June 30, 2006; as applicable; allow for exceptional short-term extensions, an exception is acceptable to the FAA if it is approved by the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(4) Except as provided by paragraph (g)(1) of this AD: After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006–0207, dated July 12, 2006; EASA Airworthiness Directive 2006–0209, dated July 12, 2006 (corrected September 1, 2006); Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 1, dated January 31, 2006; and Fokker Service Bulletin F27/28–070, dated June 30, 2006; for related information.

Issued in Renton, Washington, on August 31, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17831 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29171; Directorate Identifier 2007–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *, * * * Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 11, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–29171; Directorate Identifier 2007–NM–154–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0199, dated July 11, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005, EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Saab has issued Fuel Airworthiness Limitations 2000 LKS 009032, dated February 14, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $560, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII,

Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

SAAB Aircraft AB: Docket No. FAA–2007–29171; Directorate Identifier 2007–NM–154–AD.

Comments Due Date

(a) We must receive comments by October 11, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Saab Model SAAB 2000 airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA (European Aviation Safety Agency) published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 3 months after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the maintenance and inspection instructions in Part 1 of Saab Fuel Airworthiness Limitations 2000 LKS 009032, dated February 14, 2006. For all tasks identified in Part 1 of Saab Fuel Airworthiness Limitations 2000 LKS 009032, dated February 14, 2006, the initial compliance times start from the effective date of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in Part 1 of Saab Fuel Airworthiness Limitations 2000 LKS 009032, dated February 14, 2006.

(2) Within 12 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Part 2 of Saab Fuel Airworthiness Limitations 2000 LKS 009032, dated February 14, 2006.

(3) Except as provided by paragraph (g) of this AD: After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used.

(4) Where Saab Fuel Airworthiness Limitations 2000 LKS 009032, dated February 14, 2006, allows for exceptional short-term extensions, an exception is acceptable to the FAA if it is approved by the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, FAA, 1601 Lind, Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before

using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0199, dated July 11, 2006, and Saab Fuel Airworthiness Limitations 2000 LKS 009032, dated February 14, 2006, for related information.

Issued in Renton, Washington, on September 4, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17832 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29173; Directorate Identifier 2006–NM–283–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This proposed AD would require installing an automatic shutoff system for the auxiliary fuel tank pump, revising the airplane flight manual (AFM) to advise the flight crew of certain operating restrictions for airplanes equipped with an automatic auxiliary fuel tank pump shutoff control, revising the Airworthiness Limitations (AWLs) section of certain maintenance documents to include new inspections of the automatic shutoff system for the auxiliary fuel tank boost pumps, and, for certain airplanes, installing a placard to alert the flight crew of certain fuel usage restrictions. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent an overheat condition outside the pump explosion-resistance area that is open to the pump inlet, which could cause an ignition source for the fuel vapors in the fuel tank and result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by October 26, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29173; Directorate Identifier 2006–NM–283–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5227) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and

maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

Initial results from the SFAR 88 analysis show that fuel pumps that run dry could cause an overheat condition outside the pump explosion-resistance area that is open to the pump inlet, which could cause an ignition source for the fuel vapors in the fuel tank.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 767–28A0083 and 767–28A0084, both Revision 1, dated April 26, 2007. The service bulletins describe procedures for installing an automatic shutoff system for the auxiliary fuel tank pump. The actions involve installing new relay brackets and relays in the P36 and P37 panels, and, for certain airplanes, in the P33 panels; changing the wiring in the panels; and installing wiring between the panels.

We have also reviewed Section 9, ''Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs),'' of Boeing 767 Maintenance Planning Data (MPD) Document D622T001–9, Revision March 2006. That revision adds new fuel system Airworthiness Limitations Instruction (ALI) 28–AWL–20 to Subsection G, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs, of Section 9, which includes periodic inspections of the automatic shutoff system for the auxiliary tank fuel boost pumps to detect latent failures that could contribute to an ignition source. That revision also adds critical design configuration control limitation (CDCCL) 28–AWL–19, which includes a post-maintenance inspection of certain wiring in the fuel quantity indicating system. CDCCLs are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously. For certain airplanes, this proposed AD would also require installing a placard to alert the flight crew of certain fuel usage restrictions imposed by AD 2001–15–08. This proposed AD would also allow accomplishing the AWL revision in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Costs of Compliance

There are about 941 airplanes of the affected design in the worldwide fleet; of these, 414 are U.S. registered. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The total fleet cost could be as high as $4,655,016.

ESTIMATED COSTS

Affected airplanes	Affected airplane groups	Work hours	Average hourly labor rate	Parts	Cost per airplane
767–200, 767–300, 767–300F	1–39	29	$80	$8,924	$11,244
	40–79	25	80	8,495	10,495
	80–81	3	80	420	660
767–400ER	All	23	80	7,911	9,751

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–29173; Directorate Identifier 2006–NM–283–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 26, 2007.

Affected ADs

(b) Accomplishment of certain requirements of this AD terminates certain requirements of AD 2001–15–08, amendment 39–12342.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent an overheat condition outside the pump explosion-resistance area that is open to the pump inlet, which could cause an ignition source for the fuel vapors in the fuel tank and result in fuel tank explosions and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m) of this AD.

Installation

(f) Within 36 months after the effective date of this AD, install an automatic shutoff system for the auxiliary fuel tank pump, in accordance with Boeing Alert Service Bulletin 767–28A0083 (for Model 767–200, –300, and –300F airplanes) or 767–28A0084 (for Model 767–400ER airplanes), both Revision 1, dated April 26, 2007; as applicable.

Installation According to Previous Issue of Service Bulletin

(g) Installing an automatic shutoff system is also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–28A0083 or 767–28A0084, both dated May 3, 2006; as applicable.

Revision of Airplane Flight Manual (AFM)

(h) Concurrently with accomplishing the actions required by paragraph (f) of this AD: Revise the Boeing 767 AFM as specified in paragraphs (h)(1) and (h)(2) of this AD. This may be done by inserting a copy of this AD into the AFM.

(1) Revise Section 1, Certificate Limitations, to include the following:

''Intentional dry running of a center tank fuel pump (CTR L FUEL PUMP or CTR R FUEL PUMP message displayed on EICAS) is prohibited.

Do not reset a tripped fuel pump or fuel pump control circuit breaker.''

(2) Revise Section 3.1, Normal Procedures, to include the following:

''CENTER TANK FUEL PUMPS

Center tank fuel pumps must not be ''ON'' unless personnel are available in the flight deck to monitor low PRESS lights.

For ground operations prior to engine start:

The center tank fuel pump switches must not be positioned ON unless the center tank contains usable fuel. With center tank fuel pump switches ON, verify both center tank fuel pump low PRESS lights are illuminated and EICAS CTR L FUEL PUMP and CTR R FUEL PUMP messages are displayed.

For ground operations after engine start and flight operations: The center tank fuel pump switch must be selected OFF when the respective CTR L FUEL PUMP or CTR R FUEL PUMP message displays. Both center tank fuel pump switches must be selected OFF when either the CTR L FUEL PUMP or CTR R FUEL PUMP message displays if the center tank is empty. During cruise flight, both center tank pump switches may be reselected ON whenever center tank usable fuel is indicated.

DE-FUELING AND FUEL TRANSFER

When transferring fuel or de-fueling center or main wing tanks, the center fuel pump low PRESS must be monitored and the fuel pump switches positioned to ''OFF'' at the first indication of low pressure. Prior to transferring fuel or de-fueling, conduct a lamp test of the respective fuel pump low PRESS lights.''

Note 2: When statements identical to those in paragraph (g) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Revision of Airworthiness Limitations

(i) Concurrently with accomplishing the actions required by paragraph (f) of this AD: Revise Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document D622T001–9, ''Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs),'' to incorporate Revision March 2006. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Placard Installation

(j) For Model 767–200, –300, or –300F airplanes that meet the conditions of paragraphs (j)(1) and (j)(2) of this AD: Within 30 days after the effective date of this AD, install a placard in the flight deck adjacent to each pilot's primary flight display, to alert the flight crew to follow the procedures required by paragraph (b) of AD 2001–15–08. The placard must include the following statement:

''AD 2001–15–08 fuel usage restrictions required.''

Alternative placard wording may be used if approved by an appropriate FAA Principal Operations Inspector. Alternative placard methods and alternative methods of mixed fleet configuration control may be used if submitted for review in accordance with the procedures specified in paragraph (l) of this AD.

(1) The airplane is operated in a fleet of airplanes on which the actions specified in paragraph (f) of this AD have been done on at least one of the fleet's airplanes.

(2) The actions specified in paragraph (i) of AD 2001–15–08 (installation of modified center tank override and override/jettison fuel pumps that are not subject to the unsafe condition described in this AD) or paragraph (f) of this AD have not been done on the airplane.

Note 3: If the actions specified in paragraph (f) of this AD have been done on all airplanes operated within an operator's fleet, or if operation according to the fuel usage restrictions of AD 2001–15–08 is maintained until automatic shutoff systems are installed on all airplanes in an operator's fleet: No placard is necessary before removal of the wet shutoff restrictions of AD 2001–15–08.

Terminating Action for AD 2001–15–08

(k) For airplanes that have automatic shutoff systems installed: Accomplishment of paragraphs (f) and (j) of this AD terminates the requirements of paragraphs (b) and (c) of AD 2001–15–08.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on August 31, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17830 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 435

Mail or Telephone Order Merchandise

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comment on the overall costs, benefits, and regulatory and economic impact of its Mail or Telephone Order Merchandise Rule (''MTOR'' or ''Rule''), as part of the Commission's systematic review of all current Commission regulations and guides. The Commission has made no determination respecting retention of the Rule. Assuming, for the sake of seeking comment, the record supports retaining the Rule, the Commission also requests public comment on possible changes to the Rule to bring it into conformity with changed market conditions.

DATES: Comments will be accepted until November 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''16 CFR Part 435 Comment – Mail or Telephone Order Merchandise Rule, Project No. P924214'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material, however, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.2(d), 16 CFR 4.2(d).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *https://secure.commentworks.com/ftc-MTORComment*. To ensure that the Commission considers an electronic comment, you must file it on that web-based form. You may also visit *http://www.regulations.gov* to read this notice, and may file an electronic comment through that website. The Commission will consider all comments that *www.regulations.gov* forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC, 20580; (202) 326-2967.

SUPPLEMENTARY INFORMATION:

I. Background

The FTC promulgated the Mail Order Rule (as the Rule was then called) in 1975 in response to consumer complaints that many merchants had failed to ship merchandise ordered by mail on time, failed to ship at all, or failed to provide prompt refunds for unshipped merchandise.[2] A second proceeding in 1993 demonstrated that consumers who ordered merchandise by telephone experienced the same delayed shipment and refund problems. Accordingly, under authority of Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission amended the Rule, effective March 1, 1994, to cover merchandise ordered by telephone, including by telefax or by computer through the use of a modem (*e.g.*, Internet sales), and renamed it the ''Mail or Telephone Order Merchandise Rule.''[3]

Generally, the MTOR requires a merchant to: (1) have a reasonable basis for any express or implied shipment representation made in soliciting a sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer of, and obtain the consumer's consent to, any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's shipment or notification requirements.

II. Changing Conditions

With changes in technology and commercial practices, some of the Rule's provisions may no longer fully achieve the Commission's original goals. This section discusses these market changes and possible changes in the Rule's language to address them. The Commission has not concluded whether the changes discussed in this part are substantive or non-substantive, and it seeks comment on this subject.[4] The first such change concerns the uses of

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 40 FR 51582 (Oct. 22, 1975). The FTC initiated the rulemaking in 1971 under Section 6(g) of the FTC Act, 15 U.S.C. 46(g), and substantially completed the rulemaking when Congress amended the FTC Act by adopting Section 18, 15 U.S.C. 57a. By operation of law, the Commission treated the Mail Order Rule as having been promulgated under authority of Section 18. The Mail Order Rule took effect February 2, 1976.

[3] 58 FR 49095 (Sept. 21, 1993).

[4] Section 18 (a)(2) of the FTC Act, 15 U.S.C. 57a(a)(2), provides that in making substantive changes to rules that define with specificity unfair or deceptive acts or practices, the Commission must follow the procedures set forth in section 18(b)(1), 15 U.S.C. 57a(b)(1). Section 18(a)(2) also provides that, in making non-substantive rules (including interpretive rules) and general statements of policy, the Commission need not follow these procedures. Thus, the Commission could make non-substantive changes in accordance with sections 1.21 *et seq.* of the Commission's Rules of Practice, 16 CFR 1.21 *et seq.*, relating to rules promulgated under authority other than section 18(a)(1)(B) of the FTC Act.

technologies other than the telephone to access the Internet. The second and third changes relate to the growing availability of alternative payment and refund methods.

A. Consumer Access To The Internet By Means Other Than The Telephone

The Rule covers purchases of most merchandise ordered by telephone.[5] Section 435.2(b) of the Rule defines ''telephone'' as ''any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both.'' In promulgating this definition, the Commission made clear that it intended to cover all orders made by computer, including Internet orders.[6]

The Commission's definition of ''telephone'' accomplished this goal because at the time, consumers necessarily accessed the Internet through the telephone.[7] As the Internet became an increasingly popular means of ordering merchandise, however, alternative means of access (*e.g.*, cable and wireless) replaced some telephone dial-up services, blurring the Rule's coverage.

Because the Commission intended that the Rule cover all Internet ordering, regardless of the consumer's means of access, the Commission seeks comment on whether it should propose amending the Rule expressly to cover merchandise ordered by computer and/or via the Internet.[8]

B. Consumer Payment By Demand Draft, Debit Card, Or Other Means

Consumers' payments for goods trigger all of the merchants' obligations under the Rule. For example, the merchant's obligation to ship within the promised time (or within 30 days, if no time is promised) begins with its receipt of the consumer's ''properly completed order,'' comprised of ''all information needed to process the order'' and ''full or partial payment in the proper amount.''[9]

Moreover, different obligations ensue depending upon whether consumers pay by credit card or other means.[10]

It is, therefore, important that the Rule clearly delineate which payments trigger the merchant's obligations. Unfortunately, the advent of new payment methods has created some ambiguity on this issue. This ambiguity arises from the Rule's definitions. On the one hand, in promulgating Section 435.2(a) of the Rule, the Commission attempted to make clear that the Rule applied to all payment methods. Specifically, Section 435.2(a) defines ''mail or telephone order sales'' as ''sales in which the buyer has ordered merchandise from the seller by mail or telephone, *regardless of the method of payment* . . .'' (emphasis added). On the other hand, the definitions of ''receipt of a properly completed order,'' ''refund,'' and ''prompt refund,'' only include payment by ''cash, check, money order,'' or ''authorization from the buyer to charge an existing charge account.'' At the time the Commission adopted Section 435.2(a) no potential conflict existed because consumers paid for virtually all mail and telephone order purchases by the means enumerated in Sections 435.2(d)–(f). Consumers' current use of non-enumerated payments systems such as debit cards or demand drafts, however, requires the Commission to revisit the issue.

To effectuate its clear intent as expressed in Section 435.2(a), the Commission now seeks comment on whether to propose amending Sections 435.2(d) and (e)[11] to eliminate the phrase ''cash, check, money order'' wherever it appears and substitute the words ''other than credit.''[12] This change, however, would not end the inquiry. The MTOR creates different responsibilities depending on whether a consumer pays by a traditional means (*i.e.*, cash, check, or money order) or by credit. For example, Section 435.2(f)(1) provides that the merchant must make refunds in the form of cash, check, or money order within seven working days of the buyer's right to a refund vesting, while Section 435.2(f)(2) provides that the merchant must make credit refunds within one billing cycle of the buyer's right to a refund vesting. Payment by a new method, such as debit card or a demand draft, does not explicitly fall into either category. If the Commission proposes to change the Rule, it must determine into which of the two categories the new payment methods best fall, or whether they should be placed in a third category.

The Commission could treat these new payment methods in the same manner as cash, checks, and money orders. The different time period for providing refunds to consumers who have paid with credit is based on the unique features of the credit card payment system. Specifically, merchants using the credit card payment system use this system to reverse charges as well. Their actions can only be realized by consumers after at least one billing cycle. In contrast, debit cards and demand drafts allow merchants to access consumers' bank accounts in the same manner as traditional checks. It, therefore, seems appropriate to treat demand drafts and debit cards in the same manner as check payment methods.

C. Making Refunds Using Means Other Than First Class Mail

When it adopted the refund provisions of the Rule in 1975, the Commission expressed concern that consumers receive their Rule-required refunds ''as soon as possible while not putting an unobtainable or unreasonable time constraint on sellers.''[13] Thus Section 435.2(f)(1) requires that merchants subject to the Rule provide refunds (other than credit card refunds) by first class mail within seven business days of the consumer's right to a refund vesting. More recently, new, practicable means of sending refunds at least as quickly and reliably as first class mail may have been developed (*e.g.*, electronic funds transfer). However, merchants may feel constrained by the language of the Rule to use only first class mail for making refunds. Similarly, for purchases paid by credit card, Section 435.2(f)(2) provides that merchants making refunds must send a credit memorandum to the consumer or other notice by first class mail within

[5] *See* Section 435.1(a)(1). The only exceptions, listed in Part 435.3, include: (1) subscriptions (other than the initial installment); (2) seeds and growing plants; (3) C.O.D. orders; and (4) negative option sales covered by 16 CFR Part 425. None of the proposed changes would alter these exceptions.

[6] The Commission noted that rulemaking participants understood that the definition of ''telephone'' was meant to ''cover orders taken by mechanical means over the phone, orders placed by computers, and orders placed by fax transmission.'' 58 FR 49095, 49113.

[7] Since then, it appears that many industry members and trade associations have treated the Rule as applicable to all orders by computer. For example, the Direct Marketing Association (DMA), a national trade association for the direct marketing industry, advises members that the Rule applies to merchandise ordered by computer. *See www.the-dma.org/guidlines/30dayrule*.

[8] If the Commission amends the Rule to address this issue, it could also change the name of the Rule by adding the words ''computer'' and/or ''Internet'' to the title, or by replacing it with a title used by some industry members, the ''Distance Shopping Rule.''

[9] Section 435.2(d).

[10] Section 435.1(c) requires the merchant to make a ''prompt refund'' under certain circumstances. Section 435.2(f) defines a ''prompt refund'' depending on whether the buyer paid for the merchandise by charging it or paying with cash, check, or money order.

[11] Section 435.2(f) incorporates by reference the payment methods enumerated in Sections 435.2(d) and (e). Therefore, by amending Sections 435.2(d) and (e), the Commission will effectively amend Section 435.2(f) as well.

[12] Thus Section 435.2(e)(1) could read: '''Refund' shall mean: (1) Where the buyer tendered full payment for the unshipped merchandise in any form other than credit, a return of the amount tendered in the form it was tendered.''

[13] 40 FR 51582, 51593.

one billing cycle. Appropriate e-mail notification of a charge reversal, however, may be just as fast and reliable as providing notice by first class mail.

It may be appropriate, therefore, for the Rule to allow merchants increased flexibility in choosing the means by which they transmit cash refunds or notify consumers of charge reversals. The FTC could accomplish this change by replacing the words ''first class mail'' with the words ''by any means at least as fast and reliable as first class mail'' in Sections 435.2(f)(1) and (2). This would make it clear to merchants that they could use other means, such as private courier or electronic transfer, to provide refunds as long as the means are at least as fast and reliable as first class mail. The Commission has no basis for believing that such changes would affect current industry compliance practice.

III. Possible Renumbering

To comport with recent rules and to make the Rule easier to navigate, the Commission may prefer to organize the Rule by placing its definitions first, followed by the Rule's substance. Additionally, the Commission may prefer to organize its definitions alphabetically. If the Commission decides to retain the Rule, it may propose, therefore, to reverse and renumber Sections 435.1 and 435.2, and array each of the terms defined in alphabetical order.

IV. Regulatory Review Program

The Commission has determined to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of the Mail or Telephone Order Merchandise Rule; possible conflict between the Rule and state, local, or federal laws; and the effect on the Rule of any technological, economic, or other industry changes.

V. Request For Comment

The Commission solicits written public comment on the following questions:

(1) Is there a continuing need for the Rule as currently promulgated?

(2) What costs has the Rule imposed on, and what benefits has the Rule provided to, purchasers of merchandise ordered by mail or telephone?

(3) In what respects has the Rule affected the operation of third-party dispute mediation agencies such as the Better Business Bureau (hereafter, ''mediation agencies''), or state law enforcement agencies?

(4) What costs or benefits would amending the Rule explicitly to cover all computer and Internet orders impose on or provide to consumers, merchants, mediation agencies, or state law enforcement agencies? If the Commission decides to propose such a change, how should it revise the text of the Rule?

(5) What costs or benefits would amending the Rule to refer to payment by means other than cash, check, money order, or credit card impose on or provide to merchants, consumers, mediation agencies, or state law enforcement agencies? If the Commission decides to propose such a change, how should it revise the text of the Rule? Should the text provide an expanded list of payment methods, general classifications of payment methods (such as credit card vs. all other methods), or some other alternative?

(6) What costs or benefits would amending the Rule to permit Rule-required refunds or notices of charge reversals by means at least as fast and reliable as first class mail impose on or provide to merchants, consumers, mediation agencies, or state law enforcement agencies?

(7) What changes, if any, should the FTC make to the Rule to increase the benefits of the Rule to purchasers? How would these changes affect the costs the Rule imposes on firms subject to its requirements? How would these changes affect the benefits to purchasers?

(8) What burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements? Has the Rule provided benefits to such firms? If so, what benefits?

(9) What changes, if any, should the FTC make to the Rule to reduce the burdens or costs imposed on firms subject to its requirements? How would these changes affect the benefits provided by the Rule?

(10) How could any of the changes suggested in Part II of this notice be modified to reduce the burdens or costs imposed on firms subject to its requirements? How would these modifications affect the benefits provided to merchants, consumers, mediation agencies, or state law enforcement agencies?

(11) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(12) Would any of the changes to the Rule suggested in Part II of this notice overlap or conflict with other federal, state, or local laws or regulations?

(13) Since the FTC issued the Rule in its current form, what effects, if any, have changes in relevant technology, commercial practices or economic conditions had on the Rule? To what extent would the changes to the Rule suggested in Part II of this notice accommodate these changes?

(14) To what extent are the changes discussed in Part II of this notice either substantive or non-substantive?

(15) Should the Commission make any of the changes suggested in Part III of this notice?

VI. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

List of Subjects in 16 CFR Part 435

Mail order merchandise, Telephone order merchandise, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E7–17778 Filed 9–10–07: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 122

[USCBP–2007–0017]

Addition of San Antonio International Airport to List of Designated Landing Locations for Certain Aircraft

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs and Border Protection (CBP) Regulations by adding the San Antonio International Airport (SAT), located in San Antonio, Texas, to the list of designated airports at which

certain aircraft arriving in the continental United States from certain areas south of the United States must land for CBP processing. This proposed amendment is made to improve the effectiveness of CBP enforcement efforts to combat the smuggling of contraband by air into the United States from the south.

DATES: Comments must be received on or before November 13, 2007.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2007–0017.
- *Mail:* Border Security Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Fred Ramos, Program Manager, Traveler Security and Facilitation, Office of Field Operations, Customs and Border Protection at (202) 344–3726.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism affects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

As part of CBP's efforts to combat drug-smuggling activities, CBP air commerce regulations were amended in 1975 by Treasury Decision (T.D.) 75–201, to impose special reporting requirements and control procedures on certain aircraft arriving in the continental United States via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast from certain locations in the southern portion of the Western Hemisphere. These special reporting requirements apply to all aircraft except the following: Public aircraft; those aircraft operated on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Department of Transportation authorizing interstate, overseas air transportation; and those aircraft with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand (see 19 CFR 122.23(a)). Thus, since 1975, commanders of such aircraft have been required to furnish CBP with timely notice of their intended arrival, and required to land at the nearest airport to the point of crossing designated by CBP for processing.

Specifically, the regulations (19 CFR 122.23) provide that subject aircraft arriving in the continental United States from certain areas south of the United States must furnish a notice of intended arrival to the designated airport located nearest the point of crossing. Section 122.24(b) (19 CFR 122.24(b)) provides that, unless exempt, such aircraft must land at designated airports for CBP processing and delineates the airports designated for reporting and processing purposes for these aircraft.

During the previous six years, aircraft subject to the special reporting requirements entering the United States from the specified foreign areas at a point of crossing near San Antonio, were required to land at San Antonio International Airport (SAT) for processing by CBP. These international flights have been arriving at SAT since November 2000, when SAT was temporarily designated as an airport where aircraft arriving from certain southern areas could land pursuant to section 1453 of the Tariff Suspension and Trade Act of 2000 (Pub. L. 106–476, Nov. 9, 2000). The Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, Dec. 3, 2004) effectively extended the airport's designation through November 9, 2006.

This statutory designation has now expired. Community officials from San Antonio, Texas and the surrounding region have written CBP requesting that SAT be designated by regulation as an airport where aircraft arriving from certain southern areas must land.

During the six years that SAT has been statutorily designated as an airport at which these aircraft arriving from the south may land for customs processing, CBP has reported no incidents or problems arising from this designation. Such a designation will impose no additional burdens on CBP as CBP already has a significant presence at SAT, processing international passengers arriving on scheduled commercial airliners as a landing rights airport. These same CBP personnel have been processing passengers arriving from the south since SAT was temporarily designated as an airport where aircraft arriving from the south could land pursuant to the Tariff Suspension and Trade Act of 2000. SAT provides facilities and security and law enforcement support services, at no charge to CBP, to assist in the processing of aircraft. Consequently, by this document CBP is proposing to permanently designate SAT as an airport where certain aircraft, arriving in the United States from south of the United States, are authorized to land for CBP processing.

Proposed Amendment to Regulations

If the proposed airport designation is adopted, the list of designated airports, at which certain aircraft arriving in the continental United States from certain areas south of the United States must land for CBP processing, at 19 CFR 122.24(b), will be amended to include San Antonio International Airport, located in San Antonio, Texas.

Authority

This change is proposed under the authority of 5 U.S.C. 301, 19 U.S.C. 1433(d), 1644a, and 1624, and the Homeland Security Act of 2002, Public Law 107–296 (November 25, 2002).

Signing Authority

This amendment to the regulations is being issued in accordance with 19 CFR 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his or her delegate) to prescribe regulations not related to customs revenue functions.

The Regulatory Flexibility Act and Executive Order 12866

This proposed amendment seeks to expand the list of designated airports at which certain aircraft may land for customs processing. As described in this document, certain international flights have been arriving at SAT, pursuant to statute, from November 2000, through November 9, 2006. The expansion of the list of designated airports to include SAT will not result in any new impact on affected parties but will result in a continuation of the previous situation. Therefore, CBP certifies that the proposed rule will not have significant economic impact on a substantial number of small entities. Accordingly, the document is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined that this regulatory proposal is not a significant regulatory action as defined under Executive Order 12866.

Dated: September 4, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–17802 Filed 9–10–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Notice No. 74]

RIN 1513–AB36

Modification of Mandatory Label Information for Wine, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; solicitation of comments.

SUMMARY: In this notice, the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations regarding the mandatory labeling requirements for alcoholic beverages. The proposed regulatory changes would permit alcohol content to appear on other labels affixed to the container rather than on the brand label as currently required. These regulatory changes will provide greater flexibility in alcoholic beverage labeling, and will conform the TTB wine labeling regulations to the recent agreement reached by members of the World Wine Trade Group regarding the presentation of certain information on wine labels.

DATES: Comments must be received on or before November 13, 2007.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (Federal e-rulemaking portal; follow the instructions for submitting comments); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at *http://www.regulations.gov.* You also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400.

FOR FURTHER INFORMATION CONTACT: Mari A. Kirrane, Wine Trade and Technical Advisor, Alcohol and Tobacco Tax and Trade Bureau, 221 Main Street, Suite 1340, San Francisco, CA 94105; telephone (415) 625–5793.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Current TTB Mandatory Brand Labeling Requirements for Wine

Part 4 of the TTB regulations (27 CFR part 4) sets forth the requirements for labeling and advertising wine promulgated under the FAA Act. Section 4.10 (27 CFR 4.10) defines a brand label as the label carrying, in the usual distinctive design, the brand name of the wine. Section 4.32 (27 CFR 4.32) prescribes mandatory label information. Section 4.32(a) requires a statement of the following on the brand label:

- The brand name, in accordance with § 4.33;
- The class, type, or other designation, in accordance with § 4.34;
- The alcohol content, in accordance with § 4.36; and
- On blends consisting of American and foreign wines, if any reference is made to the presence of foreign wine, the exact percentage by volume.

In addition, § 4.32(b) lists other mandatory label information, which may appear on any label affixed to the container.

Current TTB Mandatory Brand Labeling Requirements for Distilled Spirits

Part 5 of the TTB regulations (27 CFR part 5) sets forth the requirements for labeling and advertising distilled spirits promulgated under the FAA Act. Section 5.11 (27 CFR 5.11) defines a brand label as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the bottle as the principal display panel. The principal display panel appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. Section 5.32 (27 CFR 5.32) prescribes mandatory label information. Section 5.32(a) requires a statement of the following on the brand label:

- The brand name;
- The class and type, in accordance with § 5.35; and
- The alcohol content, in accordance with § 5.37.

In addition, § 5.32(b) lists the mandatory label information that must appear on either the brand label or the back label, including net contents and the country of origin of imported spirits.

Current TTB Mandatory Brand Labeling Requirements for Malt Beverages

Part 7 of the TTB regulations (27 CFR part 7) sets forth the requirements for labeling and advertising malt beverages promulgated under the FAA Act. Section 7.10 (27 CFR 7.10) defines a brand label as the label carrying, in the usual distinctive design, the brand name of the malt beverage. Section 7.22 (27 CFR 7.22) prescribes mandatory label information. Section 7.22(a) requires a statement of the following on the brand label:

- The brand name, in accordance with § 7.23;

- The class, in accordance with § 7.24;
- The name and address (except when branded or burned in the container) in accordance with § 7.25, except as provided in § 7.22(b);
- The net contents (except when blown, branded, or burned, in the container) in accordance with § 7.27; and
- The alcohol content in accordance with § 7.71, for malt beverages that contain any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol.

In addition, § 7.22(b) lists mandatory label information that must appear on either the brand label or on a separate label (front or back).

World Wine Trade Group Agreement

The World Wine Trade Group (WWTG) is a six-member informal group composed of both government officials and industry representatives from Argentina, Australia, Canada, Chile, New Zealand, and the United States. The WWTG was formed to discuss and address issues relating to international wine trade, including reducing and preventing non-tariff barriers to wine trade.

An inter-agency team composed of representatives from, among others, TTB, the Food and Drug Administration, and the Departments of Commerce, State, and Agriculture, represents the U.S. Government during WWTG discussions. The Office of the U.S. Trade Representative heads the inter-agency team.

The WWTG recently concluded negotiations on a wine labeling agreement intended to facilitate further wine trade among members. The WWTG Agreement on Requirements for Wine Labelling, hereinafter referred to as the ''Agreement,'' was initialed on September 20, 2006, and was signed in Canberra, Australia, on January 23, 2007. A full copy of the Agreement can be viewed at *http://www.ita.doc.gov/td/ocg/WWTG-wine%20Labelling%20Agreement.pdf*. These negotiations proceeded from the view that common labeling requirements would provide industry members with the opportunity to use the same label when shipping wine to each of the WWTG member countries.

In the course of the negotiations, it was recognized that certain items of information are considered mandatory by most members. Referred to as ''Common Mandatory Information'' in the WWTG Agreement (hereinafter CMI), these four items are country of origin, alcohol content (by percentage of volume), net contents, and product name. The negotiated Agreement also incorporates the ''Single Field of Vision'' concept for the placement of the CMI. A ''Single Field of Vision'' is any part of the surface of the container, excluding its base and cap, that can be seen without having to turn the container. Under this approach, as long as all four of the CMI elements are visible at the same time, they will meet the placement requirements (if any) of each member country. According to the terms of the Agreement, each country must permit the CMI for an imported wine to appear on any label anywhere on the wine container (except the base or cap), provided all four CMI items are in a Single Field of Vision.

Conforming TTB Regulations to the WWTG Agreement

The United States will not be in compliance with the Agreement if the TTB regulations are in conflict with the CMI terms of the Agreement. Accordingly, TTB has reviewed its regulations to determine if any change is necessary in order for the United States to meet its obligation to permit these four pieces of information to appear in a single field of vision on labels of imported wines, as outlined in the Agreement. The TTB regulations do not require the inclusion of the country of origin on wine labels. This requirement is contained in statutory and regulatory provisions administered by the U.S. Bureau of Customs and Border Protection (CBP; see 19 U.S.C. 1304 and 19 CFR part 134). Consistent with these requirements, the country of origin may appear on any label affixed to a container of imported wine. The product name under the Agreement is the word ''wine'' and the TTB regulations contain no specific requirements for, or restrictions on, the use of ''wine'' alone on wine labels. As already noted in this document, the TTB regulations permit net contents to appear on any label affixed to the container. Thus, the only conflict that the TTB wine label regulations have with the CMI terms of the Agreement is in the regulatory requirement for alcohol content to appear on the brand label.

Although the Agreement applies only to imported wine, we note that the provisions in the TTB regulations described above that concern the labeling of wine, distilled spirits, and malt beverages all contain similar provisions regarding the placement of alcohol content on the brand label. TTB considered the question of whether allowing alcohol content to appear on a label other than the brand label for all three beverage groups would continue to provide consumers with adequate information regarding product identity and quality, as required under the FAA Act. In this regard, TTB notes that consumers currently may have to look beyond the brand label for alcohol beverage product identity and quality information. Specifically, under § 4.32, the required FD&C Yellow No. 5 statement may appear on a brand label or back label, the required declaration of sulfites may appear on a front, back, strip, or neck label, and the net contents generally may appear on any label affixed to the container. Under § 5.32, the required FD&C Yellow No. 5 statement may appear on the brand label or back label, the required declaration of sulfites may appear on a strip label or neck label in lieu of appearing on the front or back label, and the net contents may appear on the brand label or on a back label in the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in § 5.47 or § 5.47a. Under § 7.22, the required FD&C Yellow No. 5 statement may appear on the brand label or on a separate label on the back or front.

We believe that it is preferable, to the greatest extent possible, to have consistency among the labeling regulations for wine, distilled spirits, and malt beverages. Accordingly, we are proposing corresponding changes to all of those provisions regarding alcohol content statements on brand labels.

In this document, we are proposing to move the alcohol content requirements from paragraph (a) of §§ 4.32, 5.32, and 7.22 (label information required to appear on a brand label) to paragraph (b) of each of those sections, which prescribes in each case mandatory label requirements for information that need not appear on the brand label. The change in § 4.32 will allow industry members to apply the WWTG ''Single Field of Vision'' concept concerning the placement of CMI on labels. The additional changes in §§ 5.32, and 7.22 will foster consistency in the labeling requirements among all TTB-regulated alcohol beverage products.

This proposal is limited to removing the placement requirement for alcohol content. All other formatting requirements, such as type size and legibility, would remain the same. As previously noted, consumers are already looking beyond the brand label for product information. Moreover, the proposed rule would provide industry members with the flexibility to place alcohol content on container labels in close proximity to other consumer information, such as sulfite and FD&C Yellow No. 5 information.

Finally, we note that alcohol beverage industry members would not be required to make any changes to their current labels as a result of this regulatory change because, under the proposal, alcohol content information could still be placed on the brand label. The Agreement does not require that U.S. wine producers or importers place the four CMI elements in a Single Field of Vision, only that each country accept imported wines labeled in that way. The Single Field of Vision concept is an optional labeling format and the proposed changes to our regulations will accommodate those who wish to label their wines in that manner.

Effect on Currently Approved Labels

Sections 4.40, 4.50, 5.51, 5.55, 7.31 and 7.41 of the TTB regulations (27 CFR 4.40, 4.50, 5.51, 5.55, 7.31 and 7.41) generally require that regulated industry members obtain a certificate of label approval (COLA) from TTB prior to the bottling or removal of domestic wines, distilled spirits, or malt beverages, or the release of imported wines, distilled spirits, or malt beverages, in containers, from customs custody for consumption. No COLA is required for alcoholic beverages labeled for export. It is the position of TTB that, if the proposed regulatory amendment is adopted as a final rule, a new COLA would not be required if the only change made to the labels appearing on a previously issued COLA is moving the alcohol content to a label other than the brand label.

Public Participation

Comments Invited

We invite comments from interested members of the public on this proposed rulemaking.

Submitting Comments

You may submit comments on this notice by one of the following two methods:

• *Federal e-Rulemaking Portal:* To submit a comment on this notice using the online Federal e-rulemaking portal, visit *http://www.regulations.gov.* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, click the ''Add Comments'' icon for the appropriate Docket number and complete the resulting comment form. You may attach supplemental files to your comment. More complete information on using Regulations.gov., including instructions for accessing open and closed dockets and for submitting comments, is available through the site's ''User Tips'' link.

• *Mail*: You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov.*, please enter the entity's name in the ''Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, we will post, and you may view, copies of this notice and any electronic or mailed comments we receive about this proposal. To view a posted document or comment, go to *http://www.regulations.gov.* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, click the appropriate docket number, then click the ''View'' icon for any document or comment posted under that docket number.

All submitted and posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Analysis and Notices

Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The propose rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collection of information in this rule has been previously approved by the Office of Management and Budget (OMB) under the title ''Labeling and Advertising Requirements Under the Federal Alcohol Administration Act,'' and assigned control number 1513–0087. This proposed regulation would not result in a substantive or material change in the previously approved collection action, since the nature of the mandatory information that must appear on labels affixed to the container remains unchanged.

Drafting Information

Maria Mahone of the Knowledge Management Staff drafted this document.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

Amendment to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, parts 4, 5, and 7, as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. In § 4.32:

a. Paragraph (a)(3) is removed and reserved; and

b. A new paragraph (b)(3) is added to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 4.36.

* * * * *

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

3. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

4. In § 5.32:

a. Paragraph (a)(3) is removed and reserved; and

b. Paragraph (b)(6) is added to read as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(6) Alcohol content, in accordance with § 5.37.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

5. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

6. In § 7.22:

a. Paragraph (a)(5) is removed and reserved; and

b. Paragraph (b)(3) is revised to read as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 7.71, when required by State law or for malt beverages that contain any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol.

* * * * *

Signed: January 8, 2007.

John J. Manfreda,

Administrator.

Approved: May 21, 2007.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

Editorial Note: This document was received at the Office of the Federal Register on September 6, 2007.

[FR Doc. E7–17909 Filed 9–10–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–010]

RIN 1218–AC17

Emergency Response and Preparedness

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for information.

SUMMARY: Elements of emergency responder health and safety are currently regulated by OSHA primarily under the following standards: The Hazardous Waste Operations and Emergency Response Standard; the personal protective equipment general requirements standard; the respiratory protection standard; the permit-required confined space standard; the fire brigade standard; and the bloodborne pathogens standard. Some of these standards were promulgated decades ago, and none was designed as a comprehensive emergency response standard. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, nor do they reflect major changes in performance specifications for protective clothing and equipment. Current OSHA standards also do not reflect all the major improvements in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards.

OSHA is requesting information and comment from the public to evaluate what action, if any, the Agency should take to further address emergency response and preparedness. The Agency will be considering emergency response and preparedness at common emergencies (e.g., fires or emergency medical and other rescue situations), as well as large scale emergencies (e.g., natural and intentional disasters). OSHA's areas of interest are primarily: personal protective equipment; training and qualifications; medical evaluation and health monitoring; and safety management. The agency will also be evaluating the types of personnel who would constitute either emergency responders or skilled support employees at such events, as well as the range of activities that might constitute emergency response and preparedness.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or sent) by December 10, 2007.

Facsimile and electronic transmission: Your comments must be sent by December 10, 2007.

ADDRESSES: You may submit comments, requests for hearings and additional materials by any of the following methods:

Electronically: You may submit comments, requests for hearings, and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments, requests for hearings and attachments to the OSHA Docket Office, Docket No. S–023B, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this rulemaking (OSHA Docket No. S–023B). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.*

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the

docket are listed in the *http://www.regulations.gov* index, however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Kevin Ropp, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

General and Technical Information: Carol Jones, Acting Director, Office of Biological Hazards, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2299.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

There were more than 21 million emergency response incidents in 2002 (see Table 1). Emergency responders include: Firefighters, emergency medical service personnel, hazardous material employees, and technical rescue specialists. Law enforcement officers are also usually considered emergency responders and are often called to assist in emergency response incidents. OSHA notes, however, that it has not promulgated standards specifically addressing occupational hazards that are inherently and uniquely related to law enforcement activities. Many emergency responders are cross-trained and may serve in multiple roles depending upon the nature of the emergency incident. The hazards that emergency responders face will also vary depending upon the type of incident. In addition to emergency responders, skilled support employees can also play an important role in emergency response. Skilled support employees are not emergency responders, but nonetheless have specialized training that can be important to the safe and successful resolution of an emergency incident, such as operating heavy equipment or shutting down electrical power or natural gas.

Emergency response, which includes firefighting, is one of the most hazardous occupations in America. The United States Fire Administration has recently reported that 111 firefighters died in 2003, and that, on average, 100 firefighters have died each year for the last ten years (excluding the fatalities attributable to the terrorist attacks of September 11, 2001) (Ex. 1–2). Furthermore, the National Fire Protection Association (NFPA) reported that during the 10-year period of 1993–2002, approximately 594,000 firefighters were injured in the line of duty at emergency response incidents. The average annual rate of firefighter injuries is more than 59,000 per year for this period (Ex. 1–2).

TABLE 1.—DISTRIBUTION OF 2002 U.S. EMERGENCY INCIDENTS AS REPORTED BY THE NATIONAL FIRE PROTECTION ASSOCIATION

Emergency response	Number
Fires	1,687,500
Medical Aid	12,903,000
False Alarms	2,116,000
Mutual Aid/Assistance	888,500
Hazmat	361,000
Other Hazardous (Arcing wires, bomb removal, etc.)	603,500
All Other (Smoke scares, lock-outs, etc.)	2,744,000
Total	21,303,500

(*Source:* Ex. 1–3)

While the preceding statistics concern firefighters, this Request for Information is intended to gather information about all emergency responders and skilled support employees. However, injury and illness rates for other facets of emergency response are difficult to determine due to the multiple roles of some responders (e.g., many firefighters are also EMTs) and a lack of specific data (e.g., injury and illness rates of skilled support employees, such as heavy equipment operators, arising directly from emergency response activities). OSHA is interested in receiving information about the number and types of responder fatalities, injuries, and illnesses incurred during emergency incidents.

A recent report by the U.S. Fire Administration, *A Needs Assessment of the U.S. Fire Service,* examined the condition of the fire service and its ability to respond to incidents, both large and small (Ex. 1–4). The report found that fire departments of all sizes have unmet needs relating to both their traditional firefighting responsibilities and their new homeland security-related responsibilities. In addition, another report by the U.S. Fire Administration and the National Fallen Firefighters Foundation, *Firefighter Life Safety Summit Initial Report,* found that there are many significant health and safety concerns among the fire service (Ex. 1–5). The report recognized the need for national standards on training, qualifications, medical and physical fitness, as well as for emergency response policies and procedures. A series of three joint reports by the National Institute for Occupational Safety and Health (NIOSH) and the RAND Corporation (RAND) have also recognized a need for further standards in order to improve the operational response to terrorist attacks and better protect the health and safety of emergency responders (*Protecting Emergency Responders: Lessons Learned from Terrorist Attacks; Protecting Emergency Responders (Ex. 1–6); Volume 2: Community Views of Safety and Health Risks and Personal Protection Needs; and Protecting Emergency Responders (Ex. 1–7); Volume 3: Safety Management in Disaster and Terrorism Response* (Ex. 1–8)).

Furthermore, the Homeland Security Act of 2002 (6 U.S.C. 101) and Homeland Security Presidential Directive #8 (HSPD#8), which were established to strengthen the preparedness of the United States to prevent and respond to threatened or actual domestic terrorist attacks, major disasters, and other emergencies, have changed the Federal approach to emergency response and preparedness capabilities at Federal, State, and local entities (Ex. 1–9). In March of 2004, the Department of Homeland Security published the National Incident Management System (NIMS) (Ex. 1–10). This system provides a consistent nationwide approach for Federal, State, local and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. Homeland Security Presidential Directive #5 (HSPD#5) requires all Federal agencies to implement NIMS, and also requires Federal agencies to make the NIMS a required element for receiving State and local preparedness grant funding (Ex. 1–11). Additionally, in January 2005, the Department of Homeland Security released the National Response Plan (NRP), which establishes a comprehensive all-hazards approach to enhance the ability of the United States to manage domestic

incidents (Ex. 1–12). The NRP incorporates best practices and procedures from incident management disciplines—homeland security, emergency management, law enforcement, firefighting, public works, public health, responder and recovery worker health and safety, emergency medical services, and the private sector—and integrates them into a unified structure. The NRP forms the basis of how Federal departments and agencies will work together and how the Federal government will coordinate with State, local, and tribal governments and the private sector during incidents. In addition, the NRP establishes protocols that are applicable to emergency responders and skilled support employees in order to help protect the nation from terrorist attacks and other natural and manmade hazards; save lives; protect public health, safety, property, and the environment; and reduce adverse psychological consequences and disruptions to the American way of life.

OSHA addresses the elements of emergency responder health and safety primarily by the following OSHA standards: The hazardous waste operations and emergency response standard (29 CFR 1910.120); the personal protective equipment general requirements standard (29 CFR 1910.132); the respiratory protection standard (29 CFR 1910.134); the permit-required confined space standard (29 CFR 1910.146); the fire brigade standard (29 CFR 1910.156); and the bloodborne pathogens standard (29 CFR 1910.1030). These standards were designed to address the health and safety needs of employees over a broad cross-section of industries and workplaces. None of these standards was designed as a comprehensive emergency response standard, and as a result, specific hazards are addressed in a piecemeal manner, and important concepts in emergency management are not addressed at all.

In addition, the OSHA standards do not address the full range of hazards or concerns currently facing emergency responders. Some of these standards rely on outdated performance specifications for protective equipment. For example, the current standard on firefighters' protective clothing is based on the 1975 edition of the NFPA 1971 standard. Current OSHA standards do not reflect many of the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into the consensus standards promulgated by the NFPA and other standards development organizations. For example, the use of an incident management system is currently required only by the Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120). While the Hazardous Waste Operations and Emergency Response Standard does cover hazardous materials incidents, it does not cover most types of emergency incidents (e.g., fires, technical rescue, structural collapse or natural disasters).

In addition, coverage issues impact the Agency's activities in these areas. Many emergency responders are state and local government employees who are covered by requirements in State or local laws, either under the authority of an OSHA-approved state plan or through voluntarily established State protection programs rather than under Federal rules. In the case of the Hazardous Waste Operations and Emergency Response Standard, State and local employees in States without an OSHA-approved plan are also covered under an Environmental Protection Agency standard (40 CFR 311) that incorporates the OSHA requirements by reference.

State and local government employees are excluded from OSHA coverage under the Occupational Safety and Health Act of 1970 (the ''OSH Act''). However, pursuant to Section 18 of the OSH Act, there are 26 States and territories operating their own workplace safety and health programs under plans approved by OSHA (''State plans''), which are required to extend their coverage to public sector (State and local government) employees and employers in those jurisdictions, including many emergency responders.

The 21 States and one territory covering both private sector and State and local government employment have primary responsibility for the OSHA program in their jurisdictions. All State plans, including the 4 covering only State and local government, are responsible for adopting and enforcing standards which are ''at least as effective as'' Federal OSHA standards, and for providing compliance assistance to employers and employees under their jurisdiction. Some State plans have adopted different or supplemental standards or guidance regarding emergency response and preparedness that exceed the existing Federal OSHA standards. Some States have established public employer employee protection programs without OSHA State Plan approval and funding. Many other public sector employers still rely on the OSHA standards as an important guide in safety and health matters, even though they are not legally required to do so.

OSHA has significant experience and expertise on matters related to emergency responder health and safety. OSHA personnel, as well as personnel from the OSHA-approved State plans, routinely respond to emergencies to provide technical assistance and assure employee safety. Following the terrorist attacks at the World Trade Center on September 11, 2001, OSHA helped establish a strong and effective public-private partnership to help ensure protection for the employees at the site. At the national level, the Department of Labor, OSHA, has been designated the coordinating agency for employee safety and health under the National Response Plan (NRP). Additionally, many of the OSHA-approved State plans are working to establish a parallel role within their State emergency response structure and have implemented or assisted in the development of emergency preparedness and homeland security related initiatives and guidance materials at the State level.

The Agency has developed a wide range of technical assistance and guidance documents about the issue of emergency response as well as emergency responder health and safety (*http://www.osha.gov/SLTC/emergencypreparedness/index.html*). The OSHA Training Institute offers a variety of courses on topics essential to the safety and health of both uniformed emergency responders and skilled support employees (*http://www.osha.gov/dcsp/ote/index.html*). In addition, OSHA, in collaboration with the National Institute of Environmental Health Sciences (NIEHS), has developed a pre-event hazards awareness course for Disaster Site Workers who may respond as skilled support employees to natural or man-made emergencies (e.g., heavy equipment operators, construction workers, and electrical power or natural gas utility employees). This course is taught by OSHA Training Institute Education Centers and OSHA-authorized trainers.

On August 29, 2005, Hurricane Katrina devastated the Gulf Coast of the southeastern United States; the City of New Orleans was particularly affected. The emergency response to Hurricane Katrina underscored the importance of planning and preparedness, as well as the multidisciplinary nature of emergency response. OSHA expects that the lessons learned from this incident will be represented in the responses to this Request for Information alongside the lessons learned from both more common events as well as other events of national significance.

OSHA is requesting information and comment from the public to evaluate what action, if any, the Agency should take to further address emergency response and preparedness.

II. Request for Data, Information and Comments

The following questions have been provided to facilitate the collection of the needed information and to make it easier for the public to comment on relevant issues. The questions are grouped into five broad categories: The scope of emergency response; personal protective equipment; training and qualifications; medical evaluation and health monitoring; and safety. However, commenters are encouraged to address any aspect of emergency response and preparedness that they feel would assist the Agency in considering appropriate action on the matter. The Agency is particularly interested in ways to incorporate flexibility into its standards to make them more suited to the demands of emergency response activities. A detailed response to questions, as well as your rationale or reasoning for the position, rather than simply replying ''yes'' or ''no,'' is requested. Also, relevant data that may be useful to OSHA's deliberations, or in conducting an analysis of impacts of future Agency actions, should be submitted. In order to assess the costs, benefits or feasibility of any possible regulatory intervention, the Agency needs specific quantitative information on various safety measures being discussed. Therefore, for those instances where you recommend a specific intervention, any data in terms of costs and benefits that helps form the recommendation would be valuable. The usefulness of your response will be increased if they are tied to the categories and sections. Please label your responses with the lettered category and question number.

A. The Scope of Emergency Response

The terms ''emergency response'' and ''emergency responder'' have been defined and used differently in various government laws and regulations as well as industry consensus standards and reports. Additionally, emergency response work is unlike many other types of employment, in that the actual work site and hazards will vary based upon the location and nature of the incident. As the Agency considers the issue of emergency response, it is important to define the scope and nature of work activities that might be called emergency response and preparedness, as well as the types of employees and work activities that might be associated with emergency response and preparedness.

1. Emergency response and preparedness activities occur at both common incidents (e.g., fires, car accidents, or structural collapses) and rare or unexpected incidents (e.g., natural disasters, terrorist attacks, or special events that require enhanced preparedness). If the Agency takes action on emergency response and preparedness, should it consider either all types of emergency incidents (e.g., both common and rare events) or should certain types of incidents be excluded? If you believe a limited range is appropriate, what types of incidents or activities should be included or excluded?

2. Emergency response and preparedness activities have historically included a range of events from pre-planning for an emergency, to the actual emergency response, and, ultimately, to remediation/recovery. Should OSHA consider the full continuum of activities to be considered ''emergency response and preparedness''? If not, what is an appropriate range of activities for the Agency to consider, and why?

3. What are the factors that should indicate when the emergency response to an event has fully transitioned into remediation/recovery?

4. What types of work tasks (e.g., interior structural firefighting, exterior firefighting, pre-hospital emergency medical work, technical rescue, heavy equipment operation) should be considered emergency response or skilled support work? What are the hazards associated with each type of work task? Are there any specific work tasks that should be excluded from consideration (e.g., work that is inherently and exclusively performed by law enforcement officers)?

5. Are there any new data that describe the nature, magnitude, or impact of emergency response and preparedness operations (e.g., type and number of incidents, type and quantity of employees considered emergency responders, financial costs, or occupational injuries, illnesses, and fatalities) that OSHA should consider when evaluating the issue of emergency response and preparedness? In particular, are there relevant data on skilled support employees at emergency incidents or during preparedness activities?

6. Many emergency responders are State, county or municipal employees in States with OSHA-approved safety and health plans who are subject to the requirements of the State Plan-equivalent of the current OSHA standards in the same manner as private sector employees. As OSHA considers the necessity for further action on the safety and health of emergency responders, are there issues or concerns that are specific to such employers or employees that the Agency should consider? If your State has promulgated standards or issued guidance on emergency response and preparedness that differs from the existing OSHA standards and guidance, please describe the action taken as well as the impact and effect on the user community. Are there any concerns specific to the State agencies administering OSHA approved safety and health plans regarding OSHA's consideration of action in this area?

7. In States that do not have OSHA-approved workplace safety and health plans, to what extent are OSHA standards used as guidance for emergency responders who are public sector employees or as guidance for voluntary State public sector protection programs (e.g., personal protective clothing and equipment, training, and safety procedures)?

B. Personal Protective Equipment

Since a great deal of emergency response work occurs in an uncontrolled and dynamic work environment, personal protective equipment is a particularly important aspect of assuring the responding employees' health and safety. This section addresses a variety of types of personal protective equipment that emergency responders might use, depending on the nature of the hazards they face. The Agency is particularly interested in determining appropriate national consensus standards on the design and construction of such equipment as it considers the issue of emergency response and preparedness.

8. The current OSHA standard for firefighters' protective clothing is based upon the 1975 edition of ''NFPA 1971, *Standard on Protective Ensemble for Structural Fire Fighting.*'' The NFPA standard specifies the minimum design, performance, and certification requirements, and test methods for structural firefighting protective ensembles that include protective coats, protective trousers, protective coveralls, helmets, gloves, footwear, and interface components. The OSHA standard still allows treated fabrics as an acceptable outer shell material in firefighters' protective clothing, rather than fabrics that are inherently flame resistant. More recent editions of NFPA 1971, recently renamed the *Standard on Protective Ensemble for Structural Fire Fighting and Proximity Fire Fighting,* require the use of fabrics that are inherently flame

resistant. Inherently flame resistant fabrics are made from fibers where the flame resistance is an intrinsic property of the material, whereas treated materials are only made flame resistant by the application of a secondary chemical that can wear off or wash off over time (Ex. 1–13). Is the 1975 edition of NFPA 1971 still an appropriate standard for firefighters' protective clothing? Is the current edition of the NFPA standard, including the requirement for inherently flame resistant material, appropriate to consider? Should OSHA consider other standards, such as those issued by the International Standards Organization (ISO)?

9. With the exception of the shipyard fire protection standard (29 CFR 1915.505), OSHA standards do not require the use of a personal alert safety system (PASS) device by firefighters in order to help locate missing, trapped, or incapacitated firefighters. Is such a device necessary and appropriate for firefighters' safety in non-shipyard situations? If so, under what circumstances is it to be used? Is the current edition of ''NFPA 1982, *Standard on Personal Alert Safety Systems (PASS)*'' an appropriate standard to consider (Ex. 1–14)? This standard specifies the NFPA minimum design, performance, and certification requirements and test methods for all PASS to be used by firefighters and other emergency services personnel who engage in rescue, firefighting, and other hazardous duties. Are there additional features of a personnel accountability system, other than these safety devices, that should be an element of an emergency response system? Are there emergency response situations, other than firefighting, that should necessitate the use of a PASS device? Are emergency responders at your workplace provided with PASS devices? What are the costs of PASS devices or an alternate system? What is the expected service life of such a device in your work environment? Are there any data on their effectiveness?

10. It has been OSHA policy to enforce the use of ''NFPA 1976, *Standard on Protective Ensemble for Proximity Fire Fighting*'' compliant protective clothing and equipment for proximity firefighting (e.g., jet fuel fires) (*Standard Interpretations 04/03/1997—Appropriate protective clothing for aircraft firefighting*) The NFPA 1976 standard has recently been subsumed in the NFPA 1971 standard on firefighter's protective clothing (Ex. 1–13). This standard contains the NFPA minimum design, performance, and certification requirements and the test methods for proximity protective ensembles, including protective coats, protective trousers, protective coveralls, helmets, gloves, footwear, and interface components. Does the NFPA 1971 standard adequately protect employees performing such proximity firefighting tasks? If not, what other standards should OSHA consider?

11. Under the respiratory protection standard (29 CFR 1910.134), OSHA requires that all self-contained breathing apparatus (SCBA) be certified by the National Institute for Occupational Safety and Health (NIOSH) (42 CFR part 84). Because NIOSH does not test SCBA for exposure to heat and flame, is this certification adequate? Would it be appropriate for all SCBAs used for firefighting or emergency response to be certified by NIOSH and also certified as compliant with the current edition of ''NFPA 1981, *Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) Emergency Services*'' (Ex. 1–15)? NFPA 1981 specifies the minimum requirements for the design, performance, testing, and certification of open-circuit SCBA and combination open-circuit self-contained breathing apparatus and supplied air respirators (SCBA/SAR) for fire and emergency services personnel and includes tests for heat and flame resistance. NIOSH requires this in its new Chemical, Biological, Radiological, and Nuclear (CBRN) certification (42 CFR part 84). Are the SCBA currently used in your workplace compliant with the NFPA 1981 standard?

12. Emergency response to weapons of mass destruction such as chemical, biological, radiological, or nuclear (CBRN) agents has increasingly become viewed as a component of a local emergency response. The U.S. Department of Homeland Security (DHS) has adopted NIOSH and NFPA standards for CBRN personal protective equipment (PPE). For example, DHS requires CBRN chemical protective clothing to meet ''NFPA 1994, *Standard on Protective Ensembles for CBRN Terrorism Incidents*'' (Ex. 1–16). This standard specifies the NFPA minimum requirements for the design, performance, testing, documentation, and certification of protective ensembles designed to protect fire and emergency services personnel from chemical/biological terrorism agents. These standards provide more detailed and stringent performance testing requirements for PPE than the OSHA Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120), which requires only minimal testing for chemical resistance and garment integrity. Under what circumstances is protective clothing tested to meet the NIOSH and NFPA standards necessary (e.g., all emergency responses, or emergency response to a known or suspected CBRN agent, or only during remediation or recovery)? Similarly, the Department of Homeland Security has adopted ''NFPA 1991, *Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies*'' for use against toxic industrial chemical (TICs) and toxic industrial materials (TIMs) (Ex. 1–17). Are there emergency response situations that would necessitate the use of chemical protective clothing that was certified to NFPA chemical protective clothing standards, which involves more thorough testing than chemical protective clothing currently specified under the Hazardous Waste Operations and Emergency Response Standard? Are there any other standards on chemical protective clothing that OSHA should consider?

13. Emergency medical service providers may be exposed to hazards not common to other employees that have exposure to blood or body fluids (e.g., jagged metal or broken glass from motor vehicle accidents). Currently, OSHA's bloodborne pathogens standard (29 CFR 1910.1030) and respiratory protection standard (29 CFR 1910.134) require personal protective equipment such as gloves, gowns, eye protection, respirators, and surgical masks. Is there any PPE for pre-hospital emergency medical service personnel (EMS), not currently required by the bloodborne pathogens standard or the respiratory protection standard (29 CFR 1910.134), which may be necessary to protect EMS employees (e.g., ''*NFPA 1999, Standard on Protective Clothing for Emergency Medical Operations*'') (Ex. 1–18)? NFPA 1999 specifies the NFPA minimum design, performance, testing, and certification requirements for emergency medical clothing used by fire and EMS personnel during EMS operations. Is such equipment currently used in your workplace? What would such PPE cost and what is the expected life of the equipment?

14. Is there any PPE for emergency responders providing technical rescue services (e.g., vehicle extrication, high-angle rescue, swift-water rescue) that may be necessary for protecting employees providing such services? If so, under what circumstances should the use of such equipment be considered necessary? Please describe specific tasks and associated equipment that OSHA should consider. What would such PPE cost and what is the expected life of the equipment?

15. Employees performing urban search and rescue (USAR) tasks may be exposed to a variety of physical hazards from building debris as well as incidental exposure to thermal, chemical, or biological hazards. The Department of Homeland Security has adopted ''NFPA 1951, *Standard on Protective Ensemble for Technical Rescue Incidents* '' for emergency responders conducting USAR operations (Ex. 1–19). NFPA 1951 establishes the NFPA minimum requirements for garments, head protection, gloves, and footwear, for fire and emergency services personnel operating at technical rescue incidents involving building or structural collapse, vehicle/person extrication, confined space entry, trench/cave-in rescue, rope rescue, and similar incidents. What PPE may be necessary for protecting these emergency responders? Is NFPA 1951 an appropriate standard for OSHA to consider on the subject? Are there other standards that OSHA should consider? What equipment is being used currently in your workplace? What does the PPE cost, and how many responders are equipped with it? What is the expected life of the equipment?

16. Is there any other PPE, not already identified, that may be necessary for emergency responders or skilled support personnel? What is the equipment, what would it cost, and how many responders would need to be equipped with it? What is the expected life of the equipment?

C. Training and Qualifications

The knowledge, skills and abilities of emergency responders and skilled support employees will depend largely on the training and qualifications for required work tasks. Training and qualifications typically include both initial training as well as any periodic training (e.g., annual refresher training) that may be necessary to maintain an appropriate level of functional capability.

17. The OSHA Fire Brigade standard (29 CFR 1910.156(c)) contains broadly worded requirements on training and education and requires the quality of such training to be ''similar to'' a number of State fire training schools. Is this standard adequate to ensure firefighters are appropriately trained to perform required tasks safely? If not, what level of initial training and qualification is necessary to safely perform fire fighting tasks? Is ''NFPA 1001, *Standard for Fire Fighter Professional Qualifications*'' an appropriate standard to consider (Ex. 1–20)? NFPA 1001 identifies the minimum job performance requirements for two levels of progression of firefighters whose duties are primarily structural in nature. Are there other standards or recommendations that OSHA should consider? What amount and type of periodic refresher training should be considered the minimum necessary for firefighters? What is the appropriate format for acquiring this training? What are the training practices in your workplace?

18. The U.S. Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA), develops the National Standard Curricula for all levels of EMS personnel. What level of initial occupational health and safety training and qualification is necessary to safely perform emergency medical services? Are there any additional initial training requirements beyond the NHTSA standards appropriate for OSHA to consider (e.g., training on emergency vehicle operation or incident scene safety)? What amount and type of periodic refresher training is necessary for EMS personnel? What are the current training practices in your workplace?

19. OSHA does not currently require any specific training for rescue technicians. What level of initial training and qualification is necessary to safely perform technical rescue tasks? Is ''NFPA 1006, *Standard for Rescue Technician Professional Qualifications*'' an appropriate standard to consider (Ex. 1–21)? NFPA 1006 establishes the NFPA minimum requirements necessary for fire service and other emergency response personnel who perform technical rescue operations. These include rope rescue, surface water rescue, vehicle and machinery rescue, confined space rescue, structural collapse rescue, and trench rescue. Are there other standards or recommendations that OSHA should consider? What amount and type of annual refresher training should be considered the minimum necessary for such emergency responders? What is the appropriate format for acquiring this training (e.g., does this require travel to a specialized training facility)? What are the current training practices in your workplace?

20. Skilled support work at emergency incidents is work that is not performed by an emergency responder (e.g., firefighter or EMS provider) but is nonetheless a critical element of a safe and successful emergency response, such as heavy equipment operation, utility shut-off, and cutting and removal of iron work. The role of skilled support employees at emergency incidents is only directly addressed in the Hazardous Waste Operations and Emergency Response Standard (HAZWOPER) (29 CFR 1910.120), which does not apply to all types of emergency incidents. The standard requires skilled support employees that are needed on a temporary basis for immediate emergency support work to be given an initial briefing on necessary information but does not require them to receive the full training provisions of the standard (29 CFR 1910.120(q)(4)). What level of initial training and qualification is necessary to safely perform skilled support jobs? Should specific training for skilled support personnel, other than the initial briefing, be considered? Should refresher training on an annual or other basis for such responders be considered? The OSHA Training Institute has developed a 16-hour Disaster Site Worker Course (#7600) which emphasizes knowledge, precautions and personal protection essential to maintaining an employee's personal safety and health at a disaster site. Should skilled support personnel take the OSHA Disaster Site Worker training course, or something similar, before responding to a disaster or is just-in-time training sufficient and appropriate? What are the current training practices in your workplace?

21. OSHA standards do not address the training or qualifications for either emergency responders who operate emergency apparatus or those personnel who may have to work on an active roadway during an emergency response (e.g., responding to a car crash). Traffic accidents involving emergency apparatus, as well as incidents where emergency responders are struck by passing vehicles at incident scenes, constitute a major source of injuries for emergency responders (Ex. 1–22). Is there any training or qualifications on emergency vehicle safety or incident scene safety (e.g., ''NFPA 1002, *Standard for Fire Apparatus Driver/Operator Professional Qualifications*'') that should be considered for emergency responders as a whole or for individual groups of emergency responders, such as emergency vehicle drivers (Ex. 1–23)? What is the appropriate format for acquiring this training? What are the current training practices in your workplace?

22. The Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120), which does not apply to all types of emergency incidents, requires that incident commanders have specialized training beyond that of other employees. However, the Fire Brigade standard (29 CFR 1910.156) does not

require any additional or specialized training for fire officers that will manage or supervise the emergency response incident. Should the training and qualifications for fire officers be different than for firefighters? If so, what level of training is appropriate for officers? Is ''NFPA 1021, *Standard for Fire Officer Professional Qualifications*,'' an appropriate standard to consider in evaluating this issue (Ex. 1–24)? NFPA 1021 identifies the performance requirements necessary to perform the duties of a fire officer and specifically identifies four levels of training that progress with increasing rank and increasing responsibility. Are there other standards or recommendations OSHA should consider? What are the current training practices in your workplace?

23. OSHA's Fire Brigade standard (29 CFR 1910.156) does not distinguish between industrial fire brigades and other types of fire departments that may respond to a wider range of emergency incidents at a variety of locations. Should the minimum training and qualifications for industrial fire brigade members be different than for other firefighters? If so, what is an appropriate training standard for OSHA to consider (e.g., ''NFPA 1081, *Standard for Industrial Fire Brigade Member Professional Qualifications*'') (Ex. 1–25)? NFPA 1081 identifies the NFPA minimum job performance requirements necessary to carry out the duties of an individual who is a member of an organized industrial fire brigade providing services at a specific facility or site. Are there other standards or recommendations for fire brigades OSHA should consider? What are the current training practices in your workplace?

24. During an emergency response the Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120), which does not cover all emergency incidents, requires that the individual in charge of the incident command system (ICS) designate a safety official. The safety official has the authority to alter, suspend, or terminate any activities that are deemed to be an imminent danger to employees. The Hazardous Waste Operations and Emergency Response Standard does not establish minimum training and qualifications for a safety official, but the person must be knowledgeable in the operations being implemented and able to identify and evaluate hazards with respect to the operational safety. While the Hazardous Waste Operations and Emergency Response Standard uses the term ''safety official,'' the National Response Plan (NRP) and National Incident Management System (NIMS) use the term ''safety officer.'' In practical application, is there a distinction between these two individuals or do they essentially perform the same function? The NIMS describes the duties and functions of the safety officer at an emergency incident as monitoring incident operations and advising the Incident Commander on all matters relating to operational safety, including the health and safety of emergency responder personnel. The NIMS also does not specify the minimum training and qualifications to assume the role of safety officer. What are the minimum training and qualifications that a safety officer needs? Aside from responsibilities at an emergency incident, should a safety officer have a role in the management of an emergency response and preparedness program? If so, what should be a safety officer's non-emergency duties and functions and how would they relate to emergency response and preparedness?

25. Recently, there has been a greater emphasis on assuring continuity of incident management from the local and state responder level to the national level at incidents of national significance managed under the National Response Plan (e.g., large natural disasters). What training at the state and local level, if any, is necessary to facilitate seamless emergency operations at a joint field office (JFO) or area field office (AFO)?

26. What is the best way for OSHA to specify training for a given emergency response role? For example:

- By specifying a minimum number of hours of training;
- By specifying training content based on job tasks;
- By specifying that training be adequate to demonstrate specified competencies;
- By a combination of these methods; or
- By some other method.

Additionally, the Federal Emergency Management Agency has been working on a national credentialing system to verify training and qualifications. Should the Agency consider credentialing systems in its evaluation of training and qualifications?

D. Medical Evaluation/Health Monitoring

Emergency responders work in an environment where they may be exposed to a variety of physical, chemical, or biological hazards. The personal protective clothing and equipment that they use, as well as the inherent nature of their work, can pose an additional physiologic burden on emergency responders. Medical evaluation and health monitoring is an important factor in assuring the health and safety of emergency responders.

27. OSHA requires that hepatitis B vaccinations be made available to employees potentially occupationally exposed to blood or other body fluids in its bloodborne pathogen standard (29 CFR 1910.1030). Are other vaccinations necessary for emergency responders? If so, which vaccinations? What would these vaccinations cost? Would they need to be repeated at some point? Would they be recommended for all emergency responders or a particular subset? What are the current vaccination practices in your workplace?

28. There are currently available vaccinations for anthrax and smallpox, and other vaccinations could be developed in the future for diseases such as hepatitis C. Employers can determine, based upon their own risk assessment, if such vaccines are necessary and should be offered to their employees. If vaccines other than the hepatitis B vaccination are determined by the employer to be necessary for emergency responders, should OSHA consider non-disease specific administrative and recordkeeping procedures similar to those required for the hepatitis B vaccine (29 CFR 1910.1030(f))? These procedures could include requirements that the vaccine be made available at no cost to the employee, available to the employee at a reasonable time and place, and subject to appropriate medical screening. Are there any elements of an assessment process that should be implemented before an employer can determine that a vaccine is necessary, for example, a determination by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) or other appropriate medical recommendation?

29. Medical evaluations for emergency responders are currently regulated under the Fire Brigade (29 CFR 1910.156), Respiratory Protection (29 CFR 1910.134), and Hazardous Waste Operations and Emergency Response (29 CFR 1910.120) standards. The Fire Brigade Standard requires that employers not permit employees with known heart disease, epilepsy, or emphysema to perform emergency response work unless approved by a physician. The respiratory protection standard requires that a physician or other licensed health care professional evaluate an employees' ability to use a respirator. Such an evaluation may consist solely of a medical questionnaire. The Hazardous Waste

Operations and Emergency Response Standard has more extensive requirements for an annual medical evaluation. Is ''NFPA 1582, *Comprehensive Occupational Medical Program for Fire Departments*'' an appropriate medical evaluation for firefighters (Ex. 1–26)? NFPA 1582 contains descriptive requirements for a comprehensive occupational medical program to ensure that fire department members are medically capable of performing their required duties. Are there other medical evaluation standards that are appropriate for either firefighters or emergency responders who perform tasks other than firefighting? For emergency responders who do not perform firefighting tasks, what elements of a medical evaluation are necessary to assure that they are physically capable of performing essential job tasks while wearing an array of possibly physically burdensome personal protective clothing and equipment? How often should a medical evaluation for emergency responders be conducted? Please address the following types of medical evaluation: Pre-placement, return-to-work, annual fitness for duty evaluation, and periodic medical surveillance. What is the cost to the employer of these recommended medical evaluations for emergency responders? How is the medical evaluation of emergency responders addressed in your workplace?

30. The physiologic burden caused by performing emergency response activities and wearing PPE can be extreme (e.g., over-exertion, heat stress or dehydration). Additionally, cardiovascular fatalities represent a large percentage of firefighters' fatalities. Is on-scene rehabilitation and providing appropriate assistance (e.g., monitoring workers' temperature, blood pressure, hydration levels) an appropriate method of preventing or reducing the number of these injuries and fatalities? Is ''NFPA 1584, *Rehabilitation of Members Operating at Incident Scene Operations and Training Exercises*'' an appropriate standard for such practices (Ex. 1–27)? NFPA 1584 describes recommended practices for developing and implementing an incident scene rehabilitation program, including: Medical evaluations, re-hydration, and protection from environmental conditions. Are there other methods of protection that are available, such as adjusting work/rest regimens or physical training? Are there other standards or recommendations that OSHA should consider? Should defibrillators (either a defibrillator or an automated external defibrillator (AED)) be available at emergency incident scenes in case an emergency responder or skilled support worker has a cardiac event? Do you currently have a defibrillator or AED at emergency events?

E. Safety

The safety of emergency responders and skilled support employees is affected by the employer's policies and procedures established to govern emergency response operations. Also, the tools and equipment used by emergency responders may affect their ability to detect and monitor hazards as well as communicate those hazards to others at the emergency scene.

31. The use of an incident management system as a means to assure the health and safety of employees is required by the OSHA Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120) for emergency response to hazardous materials incidents and OSHA's Fire Brigades in Shipyards standard (29 CFR 1915.505). Is an incident management system appropriate for managing all other emergency incidents?

32. The NIMS specifies that a unified command structure be employed for all employees at an incident when there are multiple jurisdictions and agencies involved. Since each employer is responsible for the health and safety of his or her employees at emergency incidents and may affect the safety and health of other employers' employees, how can a safety management structure be developed that incorporates a multi-employer response that is commanded within a single incident command system for all types of incidents?

33. The NIMS describes the duties and functions of the safety officer at an emergency incident. However, the NIMS does not address non-emergency functions for the safety officer that may be necessary to assure the health and safety of emergency responders and skilled support personnel when an emergency does occur (e.g., assuring training requirements are met, assuring that protective clothing and equipment is adequately maintained, or reviewing and updating standard operating procedures). What are the non-emergency duties and functions that are necessary to assure the proper management of an emergency response and preparedness program? Is a designated safety program manager or administrator needed?

34. Do emergency responders need hazard detection and monitoring equipment capabilities, such as 4-gas monitors, thermal imaging cameras, or chemical, biological, and radiological detection equipment? If so, for each type of job task what abilities and equipment are needed? How much would these devices typically cost to own and operate? What are the devices' expected service life?

35. Should emergency response organizations establish written standard operating procedures (SOPs) or standard operating guidelines (SOGs) for expected emergency response activities? If so, what types of issues should be addressed in the SOPs or SOGs? How should employers determine what activities are within the expected range of operations and what activities might be outside the range of expected planning? How should employers plan and prepare for special hazards within their area of operations (e.g., high-rise buildings, industrial facilities, or open-pit mines)?

36. How can communication at emergency incidents be maintained? Is a certain type of communications hardware, such as radio systems, or handheld radios, needed by all emergency responders? What training in communications is needed? Is there evidence that portable radios are necessary for either each individual emergency responder or each team of emergency responders? If new equipment and training would be necessary, how much would they cost?

37. The Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120) gives the incident commander broad authority in managing risk by determining the scope of operations possible at a given incident. The ''two in/two out'' provision of the Respiratory Protection Standard (29 CFR 1910.134 (g)(4)) for interior structural firefighting implies, but does not directly address, the concept of risk management. How can OSHA more thoroughly address the concept of risk management at emergency incidents? What guidance should be given in weighing the health and safety of emergency responders against victim's lives, against property loss, or in situations where concerns about immediate safety may have negative consequences for long-term health, such as lung damage? How should risk management guidelines address the various phases of an emergency response from rescue, incident stabilization, through remediation/recovery? How does your workplace address the concept of risk management during emergency response and preparedness activities?

38. Are there specific features of an occupational health and safety program not addressed in previous questions that

are necessary for emergency responder health and safety (e.g., any elements contained in ''NFPA 1500, *Fire Department Occupational Safety and Health Program*'' such as life-safety rope systems) (Ex. 1–28)? NFPA 1500 provides the NFPA requirements for a fire service occupational safety and health program for fire departments. The Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120(b)) requires that employers develop and implement a written safety and health program for their employees involved in hazardous waste operations (e.g., safety and health training, medical surveillance, necessary interface between general program and site specific activities). Would a health and safety program similar to that required in 29 CFR 1910.120(b) be appropriate for emergency response activities?

39. Are there any other issues or concerns related to the health or safety of all emergency responders, or any particular group of emergency responders, that should be considered? Are there any issues related to the health and safety of skilled support personnel at emergency incidents that should be considered?

F. Additional Information

40. In addition to the specific questions above, the Agency is seeking general information on the cost of safety and health measures undertaken by municipal emergency response agencies (e.g., fire departments) and any other first responders or skilled support employees. From what levels of government are revenues derived to support emergency response and preparedness? What other sources of revenue are available? How are increased costs of operation dealt with (e.g., reduction in service, increase in response time, or increased revenue sources)? How are these issues different for smaller emergency response operations or rural areas than for larger or mid-sized operations? How often are emergency response operations contracted out to specialists, either by companies or communities?

41. Are there any existing OSHA standards, guidelines, or recommendations that, when viewed in conjunction with other Federal, State or local codes and/or the recommendation of consensus standards organizations such as, but not limited to NFPA, ANSI or ASTM, create conflict or uncertainty in the practice of emergency responding, safety and health planning, in the selection of protective equipment, in the procurement of emergency response equipment, or in the provision of training? If so, what could OSHA do to remedy these situations?

III. Public Participation

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the Federal Rulemaking Portal. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions are also available at *http://www.regulations.gov*. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about accessing materials in the docket.

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page: *http://www.osha.gov/index.html.*

IV. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR 1911, and Secretary's Order 5–2002 (67 FR 65008).

Signed at Washington, DC, this 4th day of September, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

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1–11 Homeland Security Presidential Directive #5 (HSPD#5)
1–12 National Response Plan
1–13 NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting and Proximity Fire Fighting
1–14 NFPA 1982, Standard on Personal Alert Safety Systems (PASS)
1–15 NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) Emergency Services
1–16 NFPA 1994, Standard on Protective Ensembles for First Responders to CBRN Terrorism Incidents
1–17 NFPA 1991, Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies
1–18 NFPA 1999, Standard on Protective Clothing for Emergency Medical Operations
1–19 NFPA 1951, Standard on Protective Ensemble for Technical Rescue Incidents
1–20 NFPA 1001, Standard for Fire Fighter Professional Qualifications
1–21 NFPA 1006, Standard for Rescue Technician Professional Qualifications
1–22 U.S. Fire Administration, Firefighter Fatality Retrospective Study. April 2002 FA–220
1–23 NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications
1–24 NFPA 1021, Standard for Fire Officer Professional Qualifications
1–25 NFPA 1081, Standard for Industrial Fire Brigade Member Professional Qualifications
1–26 NFPA 1582, Comprehensive Occupational Medical Program for Fire Departments
1–27 NFPA 1584, Rehabilitation of Members Operating at Incident Scene Operations and Training Exercises
1–28 NFPA 1500, Fire Department Occupational Safety and Health Program

[FR Doc. E7–17771 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1250

[NARA–07–0003]

RIN 3095–AB42

Public Availability and Use of Federal Records

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration (NARA) is proposing to revise its regulations implementing the Freedom of Information Act (FOIA). The proposed revisions update the regulations for access and release of information under the FOIA among NARA's archival holdings and NARA's own operational records.

DATES: Comments are due by November 13, 2007.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy at (301) 837–3023 or via fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed revisions to NARA's regulations on public availability and use of Federal records modify several of the procedures and responsibilities of NARA staff in response to requests submitted under the provisions of the Freedom of Information Act (FOIA). The proposed revisions update NARA's regulations to incorporate changes that have occurred since the last revision of 36 CFR part 1250, including:

- Reflecting the legal transfer of certain official military personnel records to the National Archives of the United States in 2005. The transfer of these records to NARA expands the application of 36 CFR part 1250 to twentieth-century military personnel records that are archival records; those military personnel records that have not been transferred to NARA remain under the legal custody of the agency that created them.
- Incorporating the provisions of Executive Order 13392, ''Improving Agency Disclosure of Information,'' by revising § 1250.22 to include the establishment of FOIA Customer Service Centers and the designation of FOIA Public Liaisons. The proposed rule also advises the public of a new e-mail address for the submission of FOIA requests to NARA.
- Extending the time the former and incumbent President have to respond to notification of the proposed release of presidential records consistent with E.O. 13233, Further Implementation of the Presidential Records Act (issued November 1, 2001). Executive Order 13233 allows the Presidents at least 90 days to make a determination concerning the release of presidential records.
- Incorporating changes to the fee schedule for self-service copies.
- Revising NARA's procedures for identifying records containing confidential commercial information in § 1250.82. We propose to provide a 10 day response time for the submitter, instead of the current five day period, to respond to notification of the release of confidential commercial information in the records. We also propose to change our public notification procedures to include a method of notifying multiple submitters by posting on our Web site or publishing a notice concerning the release of confidential commercial information.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because this regulation will affect only persons and organizations who file FOIA requests with NARA. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1250

Archives and records, Confidential business information, Freedom of information.

For the reasons set forth in the preamble, NARA proposes to amend part 1250 of title 36, Code of Federal Regulations, as follows:

PART 1250—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

1. Revise the authority citation for part 1250 to read as follows:

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 68 FR 15315, March 28, 2003; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235., E.O 13392, 70 FR 75371, 3 CFR, 2006 Comp., p. 216.

2. Revise the section heading of § 1250.1 to read as follows:

§ 1250.1 What is the scope of this part?

* * * * *

3. Amend § 1250.2 by revising the section heading; redesignating paragraph (k) as paragraph (l); and adding a new paragraph (k) to read as follows:

§ 1250.2 What definitions apply to this part?

* * * * *

(k) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

* * * * *

4. Amend § 1250.6 by revising paragraph (c) in the table to read as follows:

§ 1250.6 Does FOIA cover all the records at NARA?

* * * * *

If you want access to . . .	Then access is governed by . . .
* * * * * * *	
(c) Records of Congress and legislative branch agencies.	Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
* * * * * * *	

5. Revise § 1250.8 to read as follows:

§ 1250.8 Does NARA provide access to all the executive branch records housed at NARA facilities?

(a) NARA provides access to the following records:

(1) NARA operational records; and

(2) Archival records, including those Official Military Personnel Files that have been transferred to the legal custody of NARA.

(b) NARA does not provide access to the following records:

(1) Other military and civilian records that remain in the legal custody of the agencies that created them; access to such records is governed by the FOIA, Privacy Act, and other access regulations of the creating agencies. Military personnel records that are less than 62 years old from the date of the individual's separation from the military and medical records of former members of the military are held at NARA's National Personnel Records Center (NPRC), located in St. Louis, Missouri. The NPRC also houses the records of former civilian employees of the Federal government. The NPRC processes FOIA requests for these records under authority delegated by the originating agencies, not under the provisions of this part; and

(2) In our national and regional records centers, NARA stores records that agencies no longer need for day-to-day business. These records remain in the legal custody of the agencies that created them. Access to these records is through the originating agency; NARA does not process FOIA requests for these records.

6. Amend § 1250.10 by revising paragraphs (a) and (b) to read as follows:

§ 1250.10 Do I need to use FOIA to gain access to records at NARA?

(a) Most archival records held by NARA have no restrictions to access and are available to the public for research without filing a FOIA request. You may either visit a NARA facility as a researcher to view and copy records or you may write to request copies of specific records.

(b) If you seek access to archival records that are restricted and not available to the public, you must file either a FOIA request or, if the records are restricted because they contain classified national security information, a mandatory declassification review request (see part 1256 of this chapter for procedures to request access to information) to gain access to these materials. See 36 CFR 1256.76 for information on filing mandatory declassification review requests.

* * * * *

7. Amend § 1250.12 by revising paragraph (c) to read as follows:

§ 1250.12 What types of records are available in NARA's FOIA Reading Room?

* * * * *

(c) Any of this material that was created after October 31, 1996, will also be placed on NARA's Web site at *http://www.archives.gov/foia/electronic-reading-room.html*.

* * * * *

8. Revise § 1250.14 to read as follows:

§ 1250.14 If I do not use FOIA to request records, will NARA treat my request differently?

If you request executive branch agency records that contain restrictions under the provisions of the FOIA, you must submit a FOIA request. Alternatively, you may submit a mandatory review request for those records that are restricted because they contain national security classified information. If you request records that are publicly available we will respond to your request as promptly as possible, whether you invoke FOIA or not.

9. Amend § 1250.20 to revise paragraph (a) and add new paragraph (d) to read as follows:

§ 1250.20 What do I include in my FOIA request?

* * * * *

(a) Describe the records you wish to access with enough detail for NARA staff to find them with a reasonable amount of effort. The more information you provide, the better possibility NARA has of finding the records you requested. Information that helps us find records includes:

(1) The agencies, offices, or individuals involved; and

(2) The approximate date when the records were created.

* * * * *

(d) You may find NARA's ''Freedom of Information Act Reference Guide'' helpful in making your request. The ''Guide'' is available on our Web site at *http://www.archives.gov/foia/foia-guide.html*. You may request a paper copy of the ''Guide'' by writing the NARA FOIA officer at the address provided in 36 CFR 1250.22(d). For additional information about the FOIA, you may refer directly to the statute (5 U.S.C. 552, as amended).

10. Add new paragraph (g) to § 1250.22 to read as follows:

§ 1250.22 Where do I send my FOIA request?

* * * * *

(g) In accordance with the provisions of Executive Order 13392, NARA has established FOIA Customer Service Centers and designated FOIA Public Liaisons at all NARA facilities that process FOIA requests. If you have questions about the processing of your FOIA request, you may contact the designated FOIA Customer Service Center for the facility processing your request. If you continue to have concerns after that initial contact, you may wish to contact the designated FOIA Public Liaison for the facility processing your request. A list of NARA's FOIA Customer Service Centers and Public Liaisons can be found at *http://www.archives.gov/foia/contacts.html*. You may request a paper copy of the list by writing to the NARA FOIA Officer at the address provided in paragraph (d) of this section.

11. Revise § 1250.24 to read as follows:

§ 1250.24 Will you accept a FOIA request electronically?

Yes, you may submit a FOIA electronically to *foia@nara.gov*. The body of the message must contain all of the information listed in § 1250.20.

12. Amend § 1250.26 by revising paragraphs (a) and (e) to read as follows:

§ 1250.26 How quickly will NARA respond to my FOIA request?

(a) NARA will acknowledge all FOIA requests within 20 working days. We will inform you if a response to your request may take longer than the usual amount of time because of its complexity.

* * * * *

(e) If you have requested Presidential records and NARA grants you access, we must inform the incumbent and former Presidents of our intention to disclose information from those records. After receiving the notice, and pursuant to the provisions of the current Executive Order on the implementation of the Presidential Records Act, the incumbent and former president have at least 90 days in which to invoke Executive Privilege to deny access to the requested information. NARA will send you an initial response to your FOIA request within 20 working days and inform you of the status of your request. However, the final response to your FOIA request can only be made at the end of the Presidential notification period.

* * * * *

13. Amend § 1250.28 by revising the section heading and paragraph (b) to read as follows:

§ 1250.28 Will NARA ever expedite the review of the records I requested under the FOIA?

* * * * *

(b) We can expedite only those requests, or segments of requests, for records under our control. If another agency controls the records you requested, NARA must refer the request to that agency for processing. If your request is referred to another agency, we will inform you and suggest that you seek expedited review from that agency. Similarly, some records under our control contain information that remains under the control of another agency, such as classified national security information, which may require referral to the classifying agency for declassification review. NARA cannot expedite the review of national security classified records nor can we shorten the Presidential notification period described in § 1250.26(e).

14. Revise § 1250.32 to read as follows:

§ 1250.32 How quickly will NARA process an expedited request?

We will respond to your request for expedited processing within 10 calendar days of our receipt of your request. If we grant your request, the NARA office responsible for the review of the requested records will process your request as quickly as possible. We will inform you if we deny your request for expedited processing. If you decide to appeal that denial, we will also expedite our review of your appeal.

15. Amend § 1250.56 by revising paragraph (c)(1)to read as follows:

§ 1250.56 Fee schedule for NARA operational records.

* * * * *

(c) *Reproduction fees*—(1) Self-service photocopying. At NARA facilities with self-service photocopiers, you may make reproductions of released paper documents. For reproductions made at NARA facilities in the Washington, DC area the cost is 25 cents per page. For reproductions made in NARA field locations the cost is 20 cents per page.

16. Revise § 1250.60 to read as follows:

§ 1250.60 How will NARA determine if I am eligible for a fee waiver or fee reduction for NARA operational records?

(a) If you request a fee waiver, NARA considers furnishing the requested records without charge or at a fee below those listed in § 1250.56. To be eligible for a fee waiver or reduction you must explain:

(1) How the requested records pertain to the operations and activities of the Federal Government. There must be a clear connection between the identifiable operations or activities of the federal government and the subject of your request.

(2) How the release will reveal meaningful information about Federal Government activities that is not already publicly known.

(3) How the disclosure to you will advance the understanding of the general public on the issue.

(4) Your expertise or understanding of the requested records.

(5) How you intend to disseminate the requested information to a broad spectrum of the public.

(6) How disclosure will lead to a significantly greater understanding of the Government by the public.

(b) After reviewing your request and determining that there is a substantial public interest in release, NARA also reviews your request to determine if the disclosure will further your commercial interests. If it does, you are not eligible for a fee waiver or reduction.

17. Amend § 1250.74 by revising paragraph (c) to read as follows:

§ 1250.74 Where do I send my appeal?

* * * * *

(c) If you invoke FOIA and are denied access to national security information accessioned into the National Archives of the United States, you must appeal determinations that the records remain classified for reasons of national security to the agency with responsibility for declassifying that information. Only designated officials of the originating agency or responsible agency, or by NARA under a written authority, may allow access to accessioned records that contain classified national security information. NARA provides you with the necessary appeal information in those cases. You can find additional information on access to national security classified records at NARA in 36 CFR part 1256.

18. Revise § 1250.76 to read as follows:

§ 1250.76 May I submit my FOIA appeal electronically?

Yes, you may submit a FOIA appeal to *nara@foia.gov.* The body of the message must contain all of the information listed in § 1250.72(b).

19. Revise § 1250.78 to read as follows:

§ 1250.78 How does NARA handle appeals?

(a) NARA will respond to your appeal within 20 working days after its receipt by the appropriate designated appeal official. If we reverse or modify our initial decision, we will inform you in writing and reprocess your request. If we do not change our initial decision, our response to you will explain the reasons for our decision, any FOIA exemptions that apply, and your right to judicial review of our decision.

(b) An adverse determination by the Archivist or Deputy Archivist is the final action by NARA.

(c) An appeal ordinarily will not be acted on if it becomes a matter of FOIA litigation.

(d) If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

20. Revise § 1250.80 to read as follows:

§ 1250.80 How does a submitter identify records containing confidential commercial information?

A submitter of confidential commercial information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under exemption (b)(4) of the FOIA. These designations will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

21. Amend § 1250.82 by revising the introductory paragraph and paragraphs (a) and (b); redesignating paragraphs (c) through (e) as paragraphs (e) through (g) respectively; and adding new paragraphs (c) and (d) to read as follows:

§ 1250.82 How will NARA handle a FOIA request for confidential commercial information?

If NARA receives a FOIA request for records containing confidential commercial information or for records that we believe may contain confidential commercial information, we will follow these procedures:

(a) If, after reviewing the records in response to a FOIA request, we believe that the records may be released, we will make reasonable efforts to inform the original submitter of the confidential commercial information of our decision. The notice to the submitter will describe the confidential commercial information requested or include copies of the requested records.

(b) When the request is for information from a single or small number of submitters, NARA will send a notice via registered mail to the submitter's last known address. Our notice to the submitter will include a copy of the FOIA request and will tell the submitter the time limits and procedures for objecting to the release of the requested material.

(c) When the request is for information from multiple submitters,

notification may be made by posting on our Web site or publishing the notice in a place reasonably likely to inform the submitters of the proposed disclosure.

(d) Submitters have 10 working days from the receipt of our notice or the date of posting or publishing the notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period as appropriate.

* * * * *

22. Amend § 1250.84 by revising the section heading and revising paragraph (c) to read as follows:

§ 1250.84 How do you serve a subpoena or other legal demand for NARA operational records?

* * * * *

(c) Regulations concerning service of a subpoena duces tecum or other legal demand for archival records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at 36 CFR 1256.4.

Dated: September 4, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–17913 Filed 9–10–07; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–1023; FRL–8464–9]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a site specific revision to the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM–10) for Lafarge North America Corporation (Lafarge), Childs Road Terminal located in Saint Paul, Ramsey County, Minnesota. In its December 18, 2006, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's federally enforceable state operating permit into the Minnesota PM SIP, and to revoke the previously approved Administrative Order for Lafarge from the PM–10 SIP.

DATES: Comments must be received on or before October 11, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–1023, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), Air Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), Air Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 29, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–17715 Filed 9–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0533; FRL–8465–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Centre County 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Centre County ozone nonattainment area (State College Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for State College Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for State College Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the State College Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2004–2006. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the State College Area has met the criteria for redesignation to attainment specified in the Clean Air Act. In addition, PADEP submitted a 2002 base year inventory for the State College Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets

(MVEBs) that are identified in the State College Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before October 11, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0533 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: powers.marilyn@epa.gov*

C. *Mail:* EPA–R03–OAR–2007–0533, Marilyn Powers, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0533. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

Table of Contents

I. What Are the Actions EPA Is Proposing To Take?

On June 12, 2007, PADEP formally submitted a request to redesignate the State College Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on June 12, 2007, PADEP submitted a maintenance plan for the State College Area as a SIP revision to ensure continued attainment for at least 10 years after redesignation. PADEP also submitted a 2002 base year inventory as a SIP revision on June 12, 2007. The State College Area is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the State College Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the Clean Air Act. EPA is, therefore, proposing to approve the redesignation request to change the designation of the State College Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the State College Area maintenance plan as a SIP revision, such approval being one of the Clean Air Act criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the State College Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the State College Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the State College Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The Clean Air Act establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The State College Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the State

College Area (as well as most other areas of the country) effective June 15, 2005. *See*, 40 CFR 50.9(b); 69 FR at 23966 (April 30, 2004); 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, Part D of the Clean Air Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Clean Air Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS.

In addition, the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI.B. ''The State College Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and Has Fully Approved SIP under Section 110(k) of the Clean Air Act,'' EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the State College Area to attainment of the 8-hour ozone NAAQS.

The Clean Air Act, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the Clean Air Act for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, State College Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from the 3-year period of 2004–2006 indicates that the State College Area has a design value of 0.076 ppm. Therefore, the ambient ozone data for the State College Area indicates no violations of the 8-hour ozone standard.

B. The State College Area

The State College Area consists of Centre County, Pennsylvania. Prior to its designation as an 8-hour ozone nonattainment area, State College Area was an attainment/unclassifiable area for the 1-hour ozone nonattainment NAAQS. *See* 56 FR 56694 (November 6, 1991).

On June 12, 2007, PADEP requested that the State College Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2004–2006, indicating that the 8-hour NAAQS for ozone had been achieved in the State College Area. The data satisfies the Clean Air Act requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the Clean Air Act, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other Clean Air Act redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The Clean Air Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the Clean Air Act, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On June 12, 2007, PADEP requested redesignation of the State College Area to attainment for the 8-hour ozone standard. On June 12, 2007, PADEP submitted a maintenance plan for the State College Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the State College Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E). PADEP also submitted a 2002 base year inventory concurrently with its maintenance plan as a SIP revision.

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the State College Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the State College Area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Year	NO_X	VOC
2009	12.5	5.4
2018	6.0	3.7

VI. What Is EPA's Analysis of the State's Request?

EPA is proposing to determine that State College Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how PADEP's June 12, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the Clean Air Act.

A. The State College Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the State College Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the State College Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data for the years 2004–2006 (the most recent three years of data available as of the time of the redesignation request) for the State College Area. This data has been quality assured and is recorded in AQS. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

TABLE 2.—STATE COLLEGE COUNTY NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; STATE COLLEGE COUNTY MONITOR, AQS ID 42–027–0100

Year	Annual 4th high reading (ppm)
2004	0.069
2005	0.083
2006	0.078

The average for the 3-year period 2004 through 2006 is 0.076 ppm.

The air quality data for 2004–2006 show that the State College Area has attained the standard with a design value of 0.076 ppm. The data collected at the State College Area monitor satisfies the Clean Air Act requirement that the 3-year average of the annual

fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. PADEP's request for redesignation for the State College Area indicates that the data was quality assured in accordance with 40 CFR part 58. PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that State College Area has attained the 8-hour ozone NAAQS.

B. The State College Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and Has a Fully Approved SIP Under Section 110(k) of the Clean Air Act

EPA has determined that the State College Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the Clean Air Act (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the Clean Air Act, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the Clean Air Act. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant Clean Air Act requirements that come due prior to the submittal of a complete redesignation request. *See also*, Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the Clean Air Act that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the Clean Air Act. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). *See also*, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This action also sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation.

EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the Clean Air Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the Clean Air Act delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State College Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. *See*, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also*, the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's

nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Clean Air Act.

2. Part D Nonattainment Area Requirements Under the 1-Hour and 8-Hour Standards

The State College Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the Clean Air Act, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, because the State College Area was designated unclassifiable/attainment under the 1-hour standard, and was never designated nonattainment for the 1-hour standard, there are no outstanding 1-hour nonattainment area requirements it would be required to meet. Thus, we find that the Court's ruling does not result in any additional 1-hour requirements for purposes of redesignation.

With respect to the 8-hour standard, EPA notes that the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

At the time the redesignation request was submitted, the State College Area was classified under subpart 1 and was obligated to meet subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also*, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004) (which upheld this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit recognized the inequity in such retroactive rulemaking. *See, Sierra Club* v. *Whitman*, 285 F. 3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plan in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania's SIP meets all applicable SIP requirements under Part D of the Clean Air Act, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request for the State College Area. Because the Commonwealth submitted a complete redesignation request for the State College Area prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to the State College Area for the purposes of redesignation.

In addition to the fact that no Part D requirements applicable under the 8-hour standard became due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements of Part D as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the Clean Air Act requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the Clean Air Act required EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See, Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also,* 60 FR 62748 (December 7, 1995).

In the case of the State College Area, EPA has also determined that before being redesignated, the State College Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements of Areas Requesting Redesignation to Attainment.'' Normally, State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. *See* the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH

(61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the State College Area, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the Clean Air Act to ozone attainment areas within the ozone transport region (OTR). The OTR NSR requirements are more stringent than that required for a marginal or basic ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the State College Area.

All areas in the OTR, both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably Available control technology (RACT), NSR, enhanced vehicle inspection and maintenance (I/M), and Stage II vapor recovery or a comparable measure.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the State College Area by virtue of the area's designation and classification. *See,* 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

In the case of the State College Area, which is located in the OTR, nonattainment NSR will be applicable after redesignation. As discussed previously, EPA fully approved Pennsylvania's NSR SIP revision which applies the requirements for NSR of section 184 of the Clean Air Act to attainment areas within the OTR.

3. The State College Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See also,* 68 FR at 25425 (May 12, 2003) and citations therein.

The State College Area was a 1-hour attainment/unclassifiable area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). Because the State College Area was a 1-hour attainment/unclassifiable area, there are no previous Part D SIP submittal requirements. Also, no Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the State College Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the State College Area, and therefore they need not be approved into the SIP prior to redesignation.

C. The Air Quality Improvement in the State College Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the State College Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER DAY (TPD)

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	0.1	6.8	3.1	8.1	18.1
Year 2004	0.1	6.7	3.1	7.0	16.9
Diff. (02–04)	0.0	–0.1	0.0	–1.1	–1.2
Nitrogen Oxides (NO_x)					
Year 2002	5.8	0.8	4.0	18.8	29.4
Year 2004	3.8	0.9	3.8	16.8	25.3
Diff. (02–04)	–2.0	0.1	–0.2	–2.0	–4.1

Between 2002 and 2004, VOC emissions were reduced by 1.2 tpd, and NO_X emissions were reduced by 4.1 tpd. These reductions and anticipated future reductions are due to the following permanent and enforceable measures implemented or in the process of being implemented in the State College Area:

1. Stationary Point Sources
   Federal NO_X SIP Call (66 FR 43795, August 21, 2001).
2. Stationary Area Sources
   Solvent Cleaning (68 FR 2206, January 16, 2003).
   Portable Fuel Containers (69 FR 70893, December 8, 2004).
3. Highway Vehicle Sources
   Federal Motor Vehicle Control Programs (FMVCP).
   —Tier 1 (56 FR 25724, June 5, 1991)
   —Tier 2 (65 FR 6698, February 10, 2000)
   Heavy Duty Engines and Vehicles Standards (62 FR 54694, October 21, 1997 and 65 FR 59896, October 6, 2000).
   National Low Emission Vehicle

(NLEV) (64 FR 72564, December 28, 1999).
Vehicle Safety Inspection Program (70 FR 58313, October 6, 2005).
4. Nonroad Sources
Nonroad Diesel Engine and Fuel (69 FR 38958, June 29, 2004).

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

D. The State College Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the Clean Air Act

In conjunction with its request to redesignate the State College Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the State College Area for at least 10 years after redesignation. Pennsylvania is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the Clean Air Act. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the State College Area meets the requirements of the Clean Air Act regarding maintenance of the applicable 8-hour ozone standard.

What is required in a maintenance plan?

Section 175A of the Clean Air Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the Clean Air Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memo provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(1) An attainment emissions inventory;
(2) A maintenance demonstration;
(3) A monitoring network;
(4) Verification of continued attainment; and
(5) A contingency plan.

Analysis of the State College Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the State College Area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the Clean Air Act requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual ''typical summer day'' emissions of VOC and NO_X during 2004 and consists of a list of sources and their associated emissions.

PADEP prepared comprehensive VOC and NO_X emissions inventories for the State College Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

(i) *Point source emissions*—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA's publication series AP–42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP–42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) *On-road mobile sources*—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The State College Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) *Mobile nonroad emissions*—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the State College Area. For 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from *http://www.airnav.com,* and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

The 2004 attainment year VOC and NO_X emissions for the State College Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On June 12, 2007, PADEP submitted a SIP revision to supplement its June 12, 2007 redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the Clean Air Act. The State College Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the State College Area through the year 2018. A maintenance demonstration need not be based on modeling. *See, Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also,* 66 FR at 53099–53100; 68 FR at 25430–25432.

Tables 4 and 5 specify the VOC and NO_X emissions for the State College Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Mobile*	7.0	5.4	3.7
Nonroad	3.1	2.7	2.1
Area	6.7	6.4	6.7
Point	0.1	0.1	0.1
Total	16.9	14.6	12.6

* Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2018 (TPD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2018 NO_X emissions
Mobile*	16.8	12.5	6.0
Nonroad	3.8	3.2	1.9
Area	0.9	0.9	0.9
Point	3.8	6.7	7.7
Total	25.3	23.3	16.5

* Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

The following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

1. Pennsylvania's Portable Fuel Containers (69 FR 70893, December 8, 2004).

2. Pennsylvania's Consumer Products (69 FR 70895, December 8, 2004).

3. Pennsylvania's Architectural and Industrial Maintenance (AIM) Coatings (69 FR 68080, November 23, 2004).

4. Federal NO_X SIP Call (66 FR 43795, August 21, 2001).

5. Federal Clean Air Interstate Rule (71 FR 25328, April 28, 2006).

6. FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2 (56 FR 25724, June 5, 1991 and 65 FR 6698, February 10, 2000).

7. NLEV Program, which includes the Pennsylvania's Clean Vehicle Program for passenger vehicles and light-duty trucks (69 FR 72564, December 28, 1999)—proposed amendments to move the implementation to model year (MY) 2008.

8. Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006) (66 FR 5002, January 18, 2001).

9. Non-road emissions standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958, June 29, 2004).

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the State College Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the State College Area. Pennsylvania will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The Commonwealth will track the attainment status of the ozone NAAQS in the State College Area by reviewing air quality and emissions during the maintenance period. The Commonwealth will perform an annual evaluation of two key factors, vehicle miles traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, Subpart A) to see if the area exceeds the attainment year inventory (2004) by more than 10 percent. Based on these evaluations, the Commonwealth will consider whether any further emission control measures should be implemented.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Clean Air Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the State College Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the State College Area monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will

evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, State and local measure that have been adopted but not yet implemented at the time of excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will be considered in the event that a violation of the 8-hour ozone standard occurs at the State College County, Pennsylvania monitor. In the event of a violation of the 8-hour ozone standard, contingency measures will be adopted in order to return the area to attainment with the standard. Contingency measures to be considered for the State College Area will include, but not limited to the following:

Non-regulatory measures:

—Voluntary diesel engine ''chip reflash''—installation software to correct the defeat device option on certain heavy duty diesel engines.

—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local onroad or offroad fleets.

—Idling reduction technology for Class 2 yard locomotives.

—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.

—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.

—Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

Regulatory measures:

—Additional controls on consumer products.

—Additional control on portable fuel containers.

The plan lays out a process to have any regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement the non-regulatory contingency measures within 12–24 months of the trigger.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the State College Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the Clean Air Act, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. Pursuant to 40 CFR part 93 and § 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the Clean Air Act, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBs for the State College Area are listed in Table 1 of this document for the 2004, 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The State College Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the State College Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 16.9 tpd of VOC and 25.3 tpd of NO_X. PADEP projected emissions out to the year 2018 and projected a total of 12.6 tpd of VOC and 16.5 tpd of NO_X from all sources in the State College Area. The safety margin for the State College Area for 2018 would be the difference between these amounts, or 4.3 tpd of VOC and 8.8 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The

safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE STATE COLLEGE AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	16.9	25.3
2009 Interim	14.6	23.3
2009 Safety Margin	2.3	2.0
2004 Attainment	16.9	25.3
2018 Final	12.6	16.5
2018 Safety Margin	4.3	8.8

PADEP allocated 0.4 tpd NO_X and 0.3 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 0.5 tpd NO_X and 0.4 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBs for the State College Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE STATE COLLEGE AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	5.1	12.1
2009 Safety Margin Allocated to MVEBs	0.3	0.4
2009 MVEBs	5.4	12.5
2018 projected on-road mobile source projected emissions	3.3	5.5
2018 Safety Margin Allocated to MVEBs	0.4	0.5
2018 MVEBs	3.7	6.0

C. Why Are the MVEBs Approvable?

The 2004, 2009 and 2018 MVEBs for the State College Area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the State College Area Maintenance Plan?

The MVEBs for the State College Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the State College Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the State College Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov.otaq/stateresources/transconf/index.htm* (once there, click on ''Adequacy Review of SIP Submissions'').

VIII. Proposed Actions

EPA is proposing to determine that the State College Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's June 12, 2007 request for the State College Area to be redesignated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the Clean Air Act. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the State College Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for State College Area, submitted on June 12, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the State College Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the State College Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory

action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, this proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule proposing to approve the redesignation of the State College Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 30, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–17890 Filed 9–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–8465–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of a portion of the Seneca Army Depot Activity Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) announces its intent to delete from the National Priorities List (NPL) all media (surface soils, subsurface soils, structures, surface water, and ground water) within the following two specific parcels of real property located at the Seneca Army Depot Activity (SEDA) Superfund Site (Site), Romulus, New York: Real Estate Parcel 1, except for a portion of this parcel known as SEAD–24; and the entirety of Real Estate Parcel 2. EPA requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York, through its Department of Environmental Conservation (the State), have determined that all appropriate CERCLA response actions related to Parcel 1 (except the SEAD–24 portion) and Parcel 2 have been implemented. This partial deletion pertains only to Parcel 1 (except the SEAD–24 portion) and Parcel 2, and does not include any other portions of the Site. The portion of Parcel 1 known as SEAD–24 is not proposed for deletion at this time. Figure one (in the deletion docket) shows a map of Real Estate Parcels 1 and 2, and delineates between those areas being proposed for deletion and those areas that will remain on the NPL.

The purpose of the proposed deletion of Parcel 1 (except the SEAD–24 portion) and Parcel 2 is to remove uncontaminated and potentially useful property from the NPL, thereby making

the land more desirable for re-development.

EPA has compiled the documents, such as soil sample results and locations, maps, pollution reports, and other relevant deletion documentation which were used by EPA in its determination to propose deletion of these Parcels. These documents are located in the deletion docket at the locations indicated below.

DATES: EPA will accept comments concerning its proposal for partial deletion until October 11, 2007 and a local newspaper of record.

ADDRESSES: Submit your comments, identified by Docket No. EPA–HQ–SFUND–1990–0011, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *E-mail:* vazquez.julio@epa.gov.
- *Fax:* (212) 637–3256.
- *Mail:* USEPA—Region 2, Emergency and Remedial Response Division, 290 Broadway—New York, NY 10007.
- *Hand delivery:* USEPA—Region 2, Emergency and Remedial Response Division, Federal Facilities Section, 290 Broadway, 18th Floor, New York, NY 10007. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–HQ–SFUND–1990–0011. EPA's policy is to include in the public docket all comments received, without change, and to make them available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and they should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

Regional Repository, U.S. EPA Region 2 Records Center, 290 Broadway—18th Floor, New York, NY 10007–1866, *Hours:* 9 a.m. to 5 p.m.—Monday through Friday. (212) 637–4308.

Local Site Repository, Seneca Army Depot Activity, 5786 State Route 96, Building 123, Romulus, NY 14541, *Hours:* 9 a.m. to 3:30 p.m.—Monday through Thursday, (607) 869–1494.

FOR FURTHER INFORMATION CONTACT: Mr. Julio F. Vazquez, Remedial Project Manager, U.S. EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4323.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA announces its intention to delete from the NPL all media (surface soils, subsurface soils, structures, surface water, and ground water) related to a portion of Real Estate Parcel 1 and all of Real Estate Parcel 2 at the Seneca Army Depot Activity Superfund Site, located in Romulus, New York, and requests public comments on this action. The [Comment 1] NPL constitutes Appendix B of the NCP, 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of CERCLA. This partial deletion is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995). EPA and the State have determined that all appropriate CERCLA response actions related to a portion of Real Estate Parcel 1 and all of Real Estate Parcel 2 have been implemented. This partial deletion pertains only to the designated areas in Parcels 1 and 2 and does not include other portions of the Site. In addition, there is one area located within Parcel 1, known as SEAD–24, which is not proposed for deletion at this time. Boundaries of the Parcels proposed for deletion, as well as the boundaries of SEAD–24, can be reviewed at the Site's information repositories.

The following Parcels, either wholly or in part, are proposed for deletion:

Parcels	Acres deleted
Parcel 1—Empire Biofuels Redevelopment	368.6
Parcel 2—Seneca County Public Safety Building and Jail	25.2

Parcel 1, also known as the Empire Biofuels Redevelopment area, is located midway on the western edge of SEDA. Most of this Parcel did not require remedial investigations under CERCLA. The two areas within Parcel 1 that were investigated under CERCLA are known as SEAD–58 and SEAD–24 [Comment 2]. SEAD–58 includes two debris disposal areas that have been found to require no active remediation under CERCLA. SEAD–24 is a two-acre area that is not included in this proposed deletion and will remain on the NPL. SEAD–24 underwent a soil removal action in 2004 and is awaiting a determination by EPA that all appropriate response actions have been implemented.

Parcel 2, also known as the Seneca County Public Safety Building and Jail area, is located along the eastern perimeter of the SEAD Site in the southeast quadrant. The parcel encompasses two sub-parcel areas designated as SEAD–50 and SEAD–54, both of which have been remediated. Subsequent sampling of these two areas confirmed that all appropriate CERCLA response actions were performed. However, SEAD–50 and –54 are subject to Institutional Controls (ICs) because they are part of the encompassing Planned Industrial Development (PID) area [Comment 3].

SEDA, which encompasses approximately 10,634 acres, includes property owned by the U. S. Department of Army, the Seneca County Industrial Development Agency (SCIDA), the local redevelopment authority, New York State Department of Corrections, U.S. Department of Homeland Security, Seneca County, and private entities. As part of the Base Realignment and Closure Act (BRAC), the Federal government has entered into agreements with SCIDA to transfer selected

properties for public and private reuse. Parcels 1 and 2 are currently owned by SCIDA.

Seneca County, Empire Biofuels, Inc., and Flaum Management Company, Inc. requested this partial deletion to facilitate reuse of these Parcels. Summary reports submitted to EPA and the State have shown that all appropriate response actions with regard to the soil, soil vapor, structures, surface water, and ground water media for Parcels 1 and 2 (with the exception of SEAD–24 area in Parcel 1) have been performed or that the conditions pose no significant threat to public health or the environment and therefore remedial measures are not appropriate. This notice is only for the Parcels specified herein and does not include any other real properties within the Site. Ongoing remedial investigations, remedial designs, and other soil, structures, surface water, and ground water cleanup activities will continue at the portions of the Site not included in this notice of intent to delete. All of those other portions of the Site remain on the NPL, including SEAD–24 within Parcel 1.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to human health or welfare, or to the environment. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Superfund-financed remedial actions if conditions at a site warrant such action.

EPA will accept public comments concerning this notice of intention to partially delete portions of the Site for a period of thirty (30) days after publication of this notice in the **Federal Register** and a local newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where all appropriate response actions have been performed or no significant threat to public health and the environment exists. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

- Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or
- Section 300.425(e)(1)(ii). All appropriate Fund-financed responses under CERCLA have been implemented and no further cleanup by responsible parties is appropriate; or
- Section 300.425(e)(1)(iii). The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Parcel 1, with the exception of SEAD–24, is proposed for deletion from the NPL because remedial investigations have shown that no significant threat to public health or the environment exists and therefore no remedial measures are appropriate.

Parcel 2 is proposed for deletion from the NPL as all appropriate CERCLA response actions have been implemented at this area, and area-related studies or remedial investigations have shown that no further cleanup is appropriate or necessary to protect public health or the environment.

This partial deletion does not affect or impede any CERCLA response activities at areas of the Site that are not deleted and that remain on the NPL. Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management.

III. Deletion Procedures

The following procedures were used for the intended deletion of Parcels 1 (excluding the SEAD–24 portion) and 2 from the Site:

(1) The Site was listed on the NPL on August 30, 1990.

(2) Historic records, field investigations, and other information at the Site were used to establish Areas of Concern which were later designated as Solid Waste Management Units (SWMUs), which are referred to at the Site as ''SEAD–#.'' Over 100 SWMUs have been identified at the Site.

(3) It has been determined that many areas of the Site did not experience any release of hazardous substances, did not require further investigations, and did not require designation as a SWMU. Some of the areas within Parcels 1 and 2 have not been identified as areas of concern and do not have a SEAD number designation.

(4) Parcels 1 and 2 include four SWMUs: SEAD–24, –50, –54, and –58. SEAD–24, which lies within Parcel 1, is not proposed for deletion at this time. EPA has determined, however, that all appropriate response actions at SEAD–50, –54, and –58 have been implemented. These determinations were documented in Records of Decisions (RODs [Comment 4]).

(5) To facilitate transfer of property to the public and development of certain Parcels of the former SEDA facility, Empire Biofuels, Seneca County, and Flaum Management Company submitted a Draft Notice of Intent to Partial Deletion (NOIPD) package for Parcels 1 and 2, excluding the SEAD–24 portion of Parcel 1.

(6) Seneca County Industrial Development Agency has requested the deletion of the identified portions of Parcels 1 and 2.

(7) EPA recommends this partial deletion and has prepared the relevant documents.

(8) The State concurred with the deletion of these Parcels in a letter dated April 10, 2007.

(9) Concurrent with this Notice of Intent for Partial Deletion, a notice has been published in a local newspaper of record and has been distributed to appropriate Federal, State, and local officials and to other interested parties. These notices announce a thirty (30) day public comment period on the partial deletion package, which commences on the date of publication of this notice in the **Federal Register** and a local newspaper of record, whichever period is later.

(10) EPA has made all relevant documents available at the information repositories listed above.

Upon completion of the thirty (30) day public comment period, EPA will evaluate any comments received before the issuing a final decision on the partial deletion. If appropriate, EPA will prepare a Responsiveness Summary to address comments received during the public comment period responding to concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed above. If, after review of all public comments, EPA determines that this partial deletion from the NPL is appropriate, EPA will publish a final notice of deletion in the **Federal Register**. Deletion of the Parcels does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

Background

SEDA encompasses approximately 10,634 acres, including all real property within the ''fence-line'' that surrounds SEDA. The military mission of the Site has varied over the years. In 1942, it was activated as the Seneca Ordnance Depot. The mission of the Depot included the storage, maintenance, and shipment of

material for the U.S. Army, the demilitarization of conventional ammunition, and the training of Reserve and National Guard units. The Depot was designated for closure in 1995 under the Base Realignment and Closure Act, resulting in deactivation of all military activities. The Depot's military mission officially ended in 2000.

The Site was investigated by means of Areas of Concern which were later designated as SWMUs, which are referred to at the Site as SEAD–#s. The SEADs were identified based upon historic information and field investigations. Over 100 SWMUs have been identified at the Site. One or more SWMUs are located within each of the Parcels proposed for deletion. To be deleted from the NPL, EPA must determine that no response action or no further response action is appropriate.

Over the years, various hazardous substances were used at the Site, and hazardous wastes were generated, stored, or disposed there. Numerous studies and investigations have been performed to locate, assess, and quantify the past storage, disposal, and spill areas of hazardous substance at the Site. These investigations include: records searches; interviews with base personnel; field inspections; compilation of waste inventory; evaluation of disposal practices; assessments to determine the nature and extent of site contamination; soil and groundwater analysis; a base-wide health assessment; base-specific hydrology investigations; and various Site-specific investigations. Based upon such studies and information, the Site was included on the NPL on August 30, 1990. On January 21, 1993, the U.S. Army entered into a Site-specific Federal Facility Agreement with EPA and NYSDEC under Section 120 of CERCLA. By the terms of that Agreement, the Army was required to submit various reports concerning the Site to the State and EPA for review and comment. These reports addressed remedial activities required under CERCLA and included: The identification of SWMUs; scoping workplans, site inspections (SI) and remedial investigation (RI); sampling and analysis plans, quality assurance plans; baseline and mini-risk assessments; a community relations plan; and proposed plans and records of decisions.

Environmental studies pertinent to this NOIPD relied on the following documents which were completed to facilitate the characterization and evaluation process required for deletion of selected parcels. These investigations/reports included:

- SWMU Classification Report, Final, September 1994;
- Expanded Site Inspection Eight Moderately Low Priority Areas of Concern—SEADs 5, 9, 12 (A/B), (43, 56, 69), 44 (A/B), 50, 58 and 59, Draft—Final, December 1995;
- Environmental Baseline Survey Report Final, March 1997;
- Action Memorandum and Decision Document for Time-Critical Removal Actions Four Metals Sites (SEADs 24, 50/54 & 67), Final, August 2002;
- Finding of Suitability to Transfer (FOST) for the PID and Warehouse Area, July 2003;
- FOST for the Conservation/Recreation Area, July 2003;
- Deed for SEAD–50/54, April 2004;
- Final ROD for the PID and Warehouse Area at Seneca Army Depot Activity, September 2004;
- Amendment 1 to the FOST for the PID and Warehouse Area, December 2003;
- Final Completion Removal Report, Time Critical Removal Action Metal Sites, SEAD–50/54, December 2003;
- Final ROD for no Further Action SWMUs (SEAD–50/54) at Seneca Army Depot Activity, September 2005;
- Final ROD for No Action SWMU (SEAD–58) and No Further Action SWMU (SEAD–63) at Seneca Army Depot Activity, September 2006;
- Request package for Partial Deletion from SCIDA, November 2006;
- State concurrence letter, April 2007. [Comment 5]

Based on the findings of the environmental studies documented in the reports above, the parcels proposed for deletion meet the deletion criteria. The history and current status of each SWMU within the Parcels proposed for deletion are summarized below.

Parcel 1—Empire Biofuels Redevelopment [Comment 6]

This Parcel is comprised of approximately 368.6 acres and contains a portion (SEAD–58) that has been addressed under CERCLA [Comment 7]. A second area (SEAD–24), situated wholly within the boundaries of Parcel 1, is not proposed for deletion at this time. SEAD–24 has undergone a soil removal action and is awaiting a final determination as to whether all appropriate response action has been implemented. A summary of SEAD–58 is provided as follows:

SEAD–58 Debris Area Near Booster Station

Characterized as a debris area, SEAD–58 is located in the western-central portion of SEDA and is the northern-most SWMU in the Empire Biofuels Redevelopment parcel. SEAD–58 encompasses two distinct debris disposal areas that vary in size from 200–300 feet in diameter. These areas were used for the disposal of miscellaneous waste purported to include the pesticide DDT.

In 1994, an RI and supplemental Expanded Site Inspection (ESI) were initiated to characterize the full extent of environmental impacts specific to SEAD–58 and determine potential threats to human health and the environment. The investigations entailed the completion of a geophysical survey, a drilling program, test pit excavations, and an environmental sampling program designed to collect surface soil, surface water, sediment, subsurface soil, and groundwater media. Based upon the area specific analytical results evaluated for the May 2002 Mini-Risk Assessment, the Army proposed ''No Action'' as a remedy.

Subsequent to review by EPA and the State, the Final May 2002 Decision Document was modified to incorporate technical comments deleting the need for land use restrictions for the two debris disposal areas. In September 2006, EPA, with the concurrence of the State, approved the May 2002 document in which it was determined that SEAD–58, with no land use restrictions, posed no significant risk to the human health or the environment. Approval of the ''No Action'' decision forms the basis to delete SEAD–58 from the NPL, and it affects all media (surface soils, subsurface soils, structures, surface water, and ground water).

SEAD–24 Abandoned Powder Burning Pit (Not To Be Delisted)

SEAD–24, the Abandoned Powder Burning Pit, is located in the west-central portion of SEDA. The burning pit comprises an area measuring approximately 325 feet by 150 feet that is surrounded on the east, south, and west by a berm approximately 4 feet high. The area is bounded to the north by West Kendaia Road and by open grassland and brush.

The Abandoned Powder Burning Pit was active during the 1940s and 1950s. Although operating practices at this area are undocumented, it is presumed that black powder, M10 and M16 solid propellants, and explosive trash were disposed here through controlled burning. It was further presumed that petroleum hydrocarbon fuel was used to ignite the burn.

An ESI was performed at SEAD–24 between 1993 and 1994. The ESI combined geophysical surveys and intrusive methods to characterize the nature and extent of the contaminants present there. During intrusive

operations, environmental samples of soil and groundwater were collected.

Of the fifty-seven different analytes for soil, three semi-volatile organic compounds and fourteen metals were present at concentrations that exceeded cleanup objectives. The highest concentrations were primarily limited to surface soil samples.

The ground water sampling results suggested no impact to the ground water near the Abandoned Powder Burning Pit.

A time-critical removal action was conducted between 2002 and 2006 to reduce metal and carcinogenic PAHs contamination in soils. Regulatory review of this action is in progress.

Parcel 2—Seneca County Jail [Comment 8]

This 25.2 acre parcel is located in the southeast quadrant of SEDA, along its eastern perimeter. The parcel encompasses two SMWUs designated SEAD–50 and SEAD–54, of which 22 acres have been remediated under CERCLA. Investigations were completed to identify potential environmental impacts at each SWMU and were supplemented with risk evaluations that ultimately determined no further action was required for these SWMUs. Based on investigations and remedial activities performed with EPA and State approval and oversight, the SWMUs described below are proposed for deletion from the NPL.

SEAD–50 and SEAD–54 Tank Farm Area

Characterized as a former tank farm area, approximately 160 above-ground storage tanks were once located within the triangular shaped land tract known as SEAD–50/54. The preliminary investigation of the area, which was performed in 1993, was reported in the SWMU Classification Report, and as a result it was identified as a SWMU. The area which was subsequently identified as SEAD–50 was used for dry material storage that included stockpiles of strategic ores such as antimony, rutile, and silicon carbide. One storage tank (Tank #88) contained asbestos ore material and was assigned a separate SEAD designation (SEAD–54). All tanks were removed prior to implementing a phased program of investigation, evaluation, and remediation.

In 1994, an RI and supplemental ESI were performed to characterize the full extent of environmental impacts specific to the SEAD–50/54 area and determine potential threats to human health and the environment. The investigations entailed the completion of a geophysical survey, a drilling program, test pit excavations, and an environmental sampling program designed to collect surface soil, subsurface soil, surface water, sediment, and groundwater media. Analytical results identified elevated concentrations of selected metals (arsenic, lead, manganese, potassium, and zinc) in tank farm soil materials that were determined to represent a potential environmental threat. A time-critical removal action was performed from late 2002 to early 2003 to excavate, remove, and dispose of impacted soil material from SEAD–50/54. The ''Final Completion Report'' for SEAD–50/54, which documented findings of the removal action and confirmatory sampling results, presented data supporting a determination that SEAD–50/54 no longer poses a threat to human health and the environment.

EPA, with the concurrence of the State, approved a remedy in September 2005 which required ''No Further Action'' for SEADs–50/54. The remedy required that the PID and Warehouse Areas, including SEADs–50/54, be subject to controls restricting future residential development and groundwater use. Accordingly, the recorded deed for this Parcel contains the land use restrictions on land and groundwater use. [Comment 9] These land use controls are considered CERCLA actions and are included among the documents which are the basis for this action.

Major Community Involvement Activities

The Army published its Community Relations Plan in October 1992 and created a Restoration Advisory Board to facilitate participation of and input from the public throughout the CERCLA cleanup process. Each decision document at the Site has been made available for public comment, discussed at public meetings, and placed in the information repository before the decision document was finalized.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: August 17, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7–17750 Filed 9–10–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7734 & D–7818]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet

the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Larimer County, Colorado, and Incorporated Areas				
Dry Creek (North of Canal) ...	Just upstream of the confluence with Larimer and Weld Canal.	+4994	+4993	Unincorporated Areas of Larimer County.
	Approximately 900 feet downstream of Shields Street	+5017	+5016	
(South of Canal)	Just upstream of the confluence with the Cache La Poudre River.	+4919	+4916	City of Fort Collins, Unincorporated Areas of Larimer County.
	Approximately 850 feet upstream of Redwood Street	+4965	+4964	
East Vine Diversion	Just upstream of the confluence with Dry Creek (South of Canal).	None	+4944	City of Fort Collins, Unincorporated Areas of Larimer County.
	Just downstream of Larimer and Weld Canal	None	+4983	
East Vine Diversion Left Overbank Flow.	Just upstream of Vine Drive	None	+4944	City of Fort Collins, Unincorporated Areas of Larimer County.
	Approximately 1900 feet upstream of Vine Drive	None	+4948	
Larimer and Weld Canal	At the confluence with East Vine Diversion	None	+4983	City of Fort Collins, Unincorporated Areas of Larimer County.
	At the upstream diversion from Dry Creek (North of Canal).	None	+4993	
Old Dry Creek (Historic Channel).	Just downstream of Mulberry Street	+4921	+4919	Unincorporated Areas of Larimer County.
	Approximately 800 feet downstream of Dry Creek (South of Canal).	+4931	+4930	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Fort Collins

Maps are available for inspection at Stormwater Utilities Department, 700 Wood Street, Fort Collins, CO 80521.
Send comments to Doug Hutchinson, Mayor, City of Fort Collins, 300 LaPorte Avenue, Fort Collins, CO 80522–0580.

Unincorporated Areas of Larimer County

Maps are available for inspection at 200 West Oak Street, Fort Collins, CO 80521.
Send comments to Karen Wagner, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.

Graham County, North Carolina, and Incorporated Areas				
Anderson Creek	At the confluence with Tulula Creek	None	+2,255	Graham County.
	Approximately 0.4 mile upstream of State Road 1103	None	+2,643	
Atoah Creek	At the confluence with Long Creek	None	+2,045	Graham County.
	Approximately 230 feet upstream of Lewis Nelson Road.	None	+2,329	
Bear Creek (near Dentons) ..	At the confluence with Little Snowbird Creek	None	+2,510	Graham County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1.5 miles upstream of the confluence with Little Snowbird Creek.	None	+3,093	
Beech Creek	At the confluence with Sweetwater Creek	None	+2,196	Graham County.
	Approximately 1,920 feet upstream of the confluence of South Fork Beech Creek.	None	+2,363	
Bert Creek	At the confluence with Tulula Creek	None	+2,185	Graham County.
	Approximately 1,100 feet upstream of Berts Creek Road.	None	+2,344	
Buffalo Creek	At the confluence with Cheoah River	None	+1,942	Graham County.
	At the confluence of West Buffalo Creek	None	+1,942	
Cheoah River	At the confluence with Little Tennessee River	None	+1,088	Graham County, Town of Robbinsville.
	At the confluence of Tulula Creek and Sweetwater Creek.	None	+1,982	
Cochran Creek	Approximately 0.4 mile upstream of Cochrans Creek Road (State Road 1250).	None	+1,930	Graham County.
	At the confluence with Cheoah River	None	+1,963	
Cooloska Branch	At the confluence with Snowbird Creek	None	+1,942	Graham County, Eastern Band of Cherokee Indians.
	Approximately 900 feet upstream of Massey Branch Road (State Road 1116).	None	+1,965	
Tributary 1	At the confluence with Cooloska Branch	None	+1,961	Eastern Band of Cherokee Indians.
	Approximately 30 feet downstream of Jackson Branch Road (State Road 1149).	None	+2,008	
Dry Creek	At the confluence with Stecoah Creek	None	+2,050	Graham County.
	Approximately 1,630 feet upstream of Collins Cove	None	+2,629	
East Buffalo Creek	At the confluence with Cheoah River	None	+1,942	Graham County, Town of Lake Santeetlah.
	Approximately 0.4 mile upstream of Buffalo Lane	None	+2,066	
Eller Mill Creek	At the confluence with Little Snowbird Creek	None	+2,317	Graham County.
	Approximately 0.5 mile upstream of the confluence with Little Snowbird Creek.	None	+2,540	
Fontana Lake	Entire shoreline within Graham County	None	+1,710	Graham County.
Franks Creek	At the confluence with Tulula Creek	None	+2,126	Graham County.
	Approximately 1,000 feet upstream of Franks Creek Road (State Road 1207).	None	+2,315	
Gladdens Creek	At the confluence with Cheoah River	None	+1,722	Graham County.
	Approximately 0.5 mile upstream of Gladdens Creek Road (State Road 1135).	None	+1,917	
Hares Creek	At the confluence with Tulula Creek	None	+2,278	Graham County.
	Approximately 700 feet downstream of Carpenter Drive.	None	+2,602	
Hooper Mill Creek	At the confluence with West Buffalo Creek	None	+2,114	Graham County.
	Approximately 20 feet downstream of the confluence of Seven Springs Branch.	None	+2,672	
Hyde Mill Creek	At the confluence with Tulula Creek	None	+2,084	Graham County.
	Approximately 1,870 feet upstream of Floyd Carpenter Road (State Road 1132).	None	+2,433	
Juanita Branch	At the confluence with Little Snowbird Creek	None	+2,985	Graham County.
	Approximately 0.7 mile upstream of the confluence with Little Snowbird Creek.	None	+3,255	
Juts Creek	At the confluence with Tulula Creek	None	+2,425	Graham County.
	Approximately 0.5 mile upstream of U.S. Highway 129.	None	+2,580	
Little Buffalo Creek	At the confluence with West Buffalo Creek and Squally Creek.	None	+2,361	Graham County.
	Approximately 1.5 miles upstream of the confluence with West Buffalo Creek and Squally Creek.	None	+2,928	
Little Snowbird Creek	At the confluence with Snowbird Creek	None	+2,108	Graham County, Eastern Band of Cherokee Indians.
	Approximately 800 feet upstream of the confluence of Hornet Nest Branch.	None	+3,288	
Little Tennessee River	Approximately 1.7 miles downstream of the confluence of Cheoah River.	None	+1,088	Graham County.
	At the downstream side of the Fontana Dam	None	+1,277	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Long Creek	At the confluence with Cheoah River	None	+1,968	Graham County, Town of Robbinsville.
	Approximately 1.4 miles upstream of Springwood Lake Road.	None	+2,393	
Mountain Creek	At the confluence with Cheoah River	None	+1,945	Graham County, Eastern Band of Cherokee Indians.
	Approximately 50 feet downstream of Mountain Creek Road (State Road 1214).	None	+2,397	
Mouse Branch	At the confluence with Panther Creek	None	+1,710	Graham County.
	Approximately 2.0 miles upstream of the confluence with Panther Creek.	None	+1,713	
North Fork Tuskeegee Creek	At the confluence with Tuskeegee Creek	None	+1,953	Graham County.
	Approximately 1,420 feet upstream of Upper Tuskeegee NP (State Road 1242).	None	+2,031	
Ollie Branch	At the confluence with East Buffalo Creek	None	+1,943	Graham County.
	Approximately 180 feet upstream of Ollies Creek Road (State Road 1253).	None	+2,246	
Panther Creek	At the confluence with Little Tennessee River	None	+1,710	Graham County.
	Approximately 0.4 mile upstream of Shell Stand Road (State Road 1268).	None	+1,886	
Santeetlah Creek	At the confluence with Cheoah River	None	+1,942	Graham County.
	Approximately 1.8 miles upstream of the confluence with Cheoah River.	None	+1,942	
Sawyer Creek	At the confluence with Stecoah Creek	None	+1,710	Graham County.
	Approximately 0.4 mile upstream of Upper Sawyers Creek NP (State Road 1240).	None	+2,284	
Snowbird Creek	At the confluence with Cheoah River	None	+1,942	Graham County, Eastern Band of Cherokee Indians.
	Approximately 0.6 mile downstream of the confluence of Chestnut Flat Branch.	None	+2,207	
South Fork Beech Creek	At the confluence with Beech Creek	None	+2,283	Graham County.
	Approximately 1.6 miles upstream of Beech Creek Road (State Road 1223).	None	+2,845	
Squally Creek	At the confluence with West Buffalo Creek and Little Buffalo Creek.	None	+2,361	Graham County.
	Approximately 0.9 mile upstream of the confluence of South Fork Squally Creek.	None	+3,922	
Stecoah Creek	At the confluence with Little Tennessee River	None	+1,710	Graham County.
	Approximately 0.7 mile upstream of Cody Branch (State Road 1226).	None	+2,328	
Sweetwater Creek	At the confluence with Cheoah River and Tulula Creek.	None	+1,982	Graham County, Town of Robbinsville.
	Approximately 80 feet downstream of NC Highway 143.	None	+2,356	
Town Branch	At the confluence with Panther Creek	None	+1,710	Graham County.
	Approximately 0.5 mile upstream of the confluence of Town Branch Tributary 1.	None	+1,729	
Tributary 1	At the confluence with Town Branch	None	+1,710	Graham County.
	Approximately 0.5 mile upstream of the confluence with Town Branch.	None	+1,712	
Tulula Creek	At the confluence with Cheoah River and Sweetwater Creek.	None	+1,982	Graham County, Town of Robbinsville.
	Approximately 0.8 mile upstream of the confluence of Juts Creek.	None	+2,506	
Tuskeegee Creek	At the confluence with Little Tennessee River	None	+1,710	Graham County.
	At the confluence of North Fork Tuskeegee Creek	None	+1,953	
West Buffalo Creek	At the confluence with Buffalo Creek	None	+1,942	Graham County.
	At the confluence of Squally Creek and Little Buffalo Creek.	None	+2,361	
Wolf Creek	At the confluence with Panther Creek	None	+1,710	Graham County.
	Approximately 0.5 mile upstream of Little Bear Lane	None	+1,855	
Yellow Creek	At the confluence with Cheoah River	None	+1,447	Graham County.
	Approximately 0.9 mile upstream of Yellow Creek Road (State Road 1242).	None	+2,338	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

ADDRESSES

Eastern Band of Cherokee Indians

Maps are available for inspection at Ginger Lynn Welch Complex, 810 Aquona Road, Cherokee, North Carolina.
Send comments to Mr. Michell Hicks, Principal Chief for the Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, North Carolina 28719.

Graham County

Maps are available for inspection at Graham County Mapping Department, 12 North Main Street, Robbinsville, North Carolina.
Send comments to Mrs. Sandra Smith, Graham County Manager, 12 North Main Street, Robbinsville, North Carolina 28771.

Town of Lake Santeetlah

Maps are available for inspection at Lake Santeetlah Town Hall, 4 Marina Drive, Lake Santeetlah, North Carolina.
Send comments to The Honorable Harding Hohenschutz, Mayor of the Town of Lake Santeetlah, 4 Marina Drive, Lake Santeetlah, North Carolina 28771.

Town of Robbinsville

Maps are available for inspection at Robbinsville Town Hall, 4 Court Street, Robbinsville, North Carolina.
Send comments to The Honorable Bobby Cagle, Jr., Mayor of the Town of Robbinsville, P.O. Box 129, Robbinsville, North Carolina 28771.

Moody County, South Dakota, and Incorporated Areas

Big Sioux River	Just upstream of County Highway 32 2500 feet upstream of First Avenue.	None None	+1532 +1543	Unincorporated Areas of Moody County, City of Flandreau.

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Flandreau

Maps are available for inspection at 1005 W. Elm Avenue, Planning and Zoning Department, Flandreau, SD 57028.
Send comments to The Honorable Warren Ludeman, Mayor, City of Flandreau, 1005 W. Elm Avenue, PO Box 343, Flandreau, SD 57028.

Unincorporated Areas of Moody County

Maps are available for inspection at 101 E. Pipestone Avenue, Suite E, Flandreau, SD 57028.
Send comments to Ms. Brenda Duncan, Planning and Zoning Secretary, 101 E. Pipestone Avenue, Suite E, Flandreau, SD 57028.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 31, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–17821 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Kenk's Amphipod, Virginia Well Amphipod, and the Copepod Acanthocyclops columbiensis as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Kenk's amphipod (*Stygobromus kenki*), the Virginia well amphipod (*Stygobromus phreaticus*), and the copepod *Acanthocyclops columbiensis* as endangered under the Endangered Species Act of 1973, as amended. We find the petition does not provide substantial scientific or commercial information indicating that listing of these three crustaceans may be warranted. Therefore, we will not initiate a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of these species, or threats to them or their habitat, at any time. This information will help us monitor and encourage the conservation of these species.

DATES: The finding announced in this document was made on September 11, 2007.

ADDRESSES: The supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Chesapeake Bay Field Office, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, MD 21401. New information, materials, comments, or questions concerning this species may be submitted to us at any time at the above address.

FOR FURTHER INFORMATION CONTACT: John Wolflin, Field Supervisor, Chesapeake Bay Field Office (see **ADDRESSES**) (telephone 410–573–4574; facsimile 410–269–0832). People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We base this finding on information provided in the petition, supporting

information submitted with the petition (and determined to be reliable after review), and information available in our files or otherwise available to us at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and promptly publish our notice of the finding in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

In making this finding, we relied on information provided by Dr. Richard Mitchell and Mr. Rob Gordon (herein referred to as ''the petitioners'') in the initial petition and petition supplement that we determined to be reliable after reviewing sources referenced in the petition, and information otherwise available in our files at the time of the petition review. We evaluated this information in accordance with 50 CFR 424.14(b). Our process of making a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial [scientific or commercial] information'' threshold. The substantiality test is applied only to the reliable information supporting the petition.

On March 27, 2001, we received a petition dated March 20, 2001, from Dr. Richard Mitchell to list as endangered: Kenk's amphipod (*Stygobromus kenki*); Virginia well amphipod (*Stygobromus phreaticus*); and a copepod with no common name (*Acanthocyclops columbiensis*), which we refer to by its scientific name in this document. In this document, we will collectively refer to these three crustaceans as the three invertebrates. The Service received a supplement to this petition dated June 26, 2001, from Mr. Rob Gordon of the National Wilderness Institute.

Action on the petition and supplement was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2001. However, the Service did evaluate the need for emergency listing based on the information provided in the initial petition and the supplement and determined that the threats described did not constitute immediate threats of a magnitude that would justify emergency listing. The Service sent letters to Dr. Mitchell on April 17 and June 14, 2001, and to Mr. Gordon on August 1, 2001, explaining this determination.

Species Information

Amphipods of the genus *Stygobromus* occur in groundwater or groundwater-related habitats (for example, caves, seeps, small springs, wells, interstices, and rarely deep lakes). They are small crustaceans modified for survival in these subterranean habitats; they are generally eyeless and unpigmented (Holsinger 1978, pp. 1–2). Members of this genus occur only in fresh water and belong to the family Crangonyctidae, the largest family of freshwater amphipods in North America. Both Kenk's amphipod and Virginia well amphipod were described by Dr. John R. Holsinger (Holsinger 1978, pp. 39–42, 98–101) and occur in seeps and springs. The Kenk's amphipod was historically reported (tentative identification) from a well in northern Virginia, and the Virginia well amphipod was reported historically from two wells in northern Virginia. The specific name *phreaticus* indicates that this species is most likely to be found in deeper groundwater habitats. Both species can be found in dead leaves or fine sediment submerged in the waters of their spring-seep outflows (Holsinger 1978, p. 130). The two sites mentioned in the petitions and the additional four known sites for Kenk's amphipod are seeps in the Rock Creek drainage in Washington, DC, and Montgomery County, MD (Feller 2005, p. 11). The only known extant site for Virginia well amphipod is a seep in a ravine on Fort Belvoir, a U.S. Army installation in Fairfax County, VA.

Acanthocyclops columbiensis is a crustacean of the subclass Copepoda. Copepods are generally microscopic and, as a group, are widely distributed in a variety of freshwater and marine habitats. *A. columbiensis* was described by Dr. Janet W. Reid (Reid 1990, pp. 175–180). The species has been found in acidic pools below seeps or springs at two locations in Prince Georges County, MD: a spring at Oxon Hill Farm Park and a seep at Fort Stanton Park. Both parks are administered by the National Park Service (NPS). No status survey has been conducted for the species, and it is likely that it will be found at additional locations, as were related species in brackish wetlands (Reid 2001; Palmer 2001).

To our knowledge, the taxonomy of the three invertebrates has never been challenged, indicating that they are valid species.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR Part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the three invertebrates presented in the petition and identified in other information available to us may pose a concern with respect to the species' survival. Our evaluation of these threats is presented below. In the discussion below, we have placed the threats listed in the petition under the most appropriate listing factor.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

General

The petitioners state that rapid commercial and residential development over the last 20 years in the metropolitan Washington, DC, area has destroyed numerous seeps, springs, and bogs associated with the Coastal Plain and Piedmont elements of the Upper Potomac River and its tributaries. Associated with this development are runoff and pollution that further degrade the habitat of these unique endemic invertebrates. The petitioners assert that the groundwater table has lowered drastically and wells, springs, and seeps have dried in the last 100 years. The petitioners claim that, currently, little habitat remains for the three invertebrates except in heavily used parks and on military reservations. The petitioners assert that given their limited distribution and highly restricted habitats, the three invertebrates could be driven to extinction by relatively small human disturbances such as a single construction project.

Kenk's Amphipod

The petition supplement states that *S. kenki* is currently known from only two sites (East Spring and Sherrill Drive Spring) in Rock Creek Park (administered by NPS), and it indicates

that a species existing in a park is not, of itself, adequate protection. The petitioners state that a macroinvertebrate survey of Rock Creek (no citation provided, but identified by the Service as Feller 1997) described both sites as highly threatened and believed the existence of *S. kenki* is equally as tenuous to *S. hayi,* a listed species that occurs within the park boundary. The petitioners also state that according to the NPS (no citation provided):

> Long-term threats exist within and outside the borders of Rock Creek Park. The East Spring site could be threatened by additional development of the recreation area located up slope. The Sherrill Drive Spring site could be threatened by any changes in open space at Walter Reed Hospital or surrounding homes. An example is the plan Walter Reed Hospital has for building an additional Research facility on its grounds.

The petitioners assert that rebuilding the stormwater infrastructure of the city by the District of Columbia threatens the species (Twomey 2001).

The petitioners state that unusually high flood levels from Rock Creek reach the level of the spring habitat of Kenk's amphipod, and this spring habitat has been flooded with increasing frequency in recent years. They indicate that flood waters may adversely affect spring habitat by washing away leaf litter and fine sediments, which form the microhabitat utilized by *S. kenki*.

Virginia Well Amphipod

The petitioners state that *S. phreaticus* is known from only one current location and that until its rediscovery at Fort Belvoir, there was concern that it was extinct (no citation provided). The petitioners cite Terwilliger (1991, p. 185) to support their claim that it is unlikely that the species exists elsewhere. This claim is further supported in the petition by Holsinger (1978) who hypothesizes that the very distinctive morphological structure of the Virginia well amphipod makes it unlikely to be overlooked in other collections.

The petitioners state that there are an increasing number of activities at Fort Belvoir that could affect *S. phreaticus*. In the Fort, in addition to constant activity such as military exercises and training, there is the prospect of greatly increased building activities, including creation of the Army Museum with its attendant construction activities and increased visitation. The petitioners also state that planning is underway for additional bridges crossing the Potomac River near Washington and conclude that the cumulative result of these ongoing and increasing activities for *S. phreaticus* will be imminent extinction in the absence of the Act's protection.

Acanthocyclops columbiensis

The petitioners state that *A. columbiensis*, unless protected, could likewise be extirpated at any moment. They indicate that it is known from only two locations, Fort Stanton and Oxon Hill Parks. They further assert that *A. columbiensis'* occurrence in a National Park affords it little specific protection. Rob Gordon (author of the petition supplement) has not seen the Fort Stanton site but indicates that at Oxon Hill, where it is found in a small, brick-lined spring, *A. columbiensis* is vulnerable to extirpation. Gordon cites impacts from humans (such as, litter and discarded harmful substances) and a current major Federal construction project (Wilson Bridge), which includes a 12-lane, two-span drawbridge and expansive network of approaches, as threats to this species. He asserts that the highway project alone could massively alter the hydrologic regime, altering ground water recharge and introducing pollution from the project area.

Evaluation of Information in the Petition

The citations provided in the petition do not support the petitioner's claims for any of the three species. Furthermore, the assertion that the three invertebrates could be driven to extinction by a single construction project is not plausible for Kenk's amphipod, which occurs at six different sites (Feller 2005, p. 11), or for *A. columbiensis*, which is known from two different sites and may occur in many more areas (Reid 2001). It is more plausible for Virginia well amphipod, which, at present, is only known from a single site on Fort Belvoir. However, the petition provides no information about, nor are we aware of, any projects planned within the recharge area for this species as delineated by the hydrogeologic study funded by Fort Belvoir (MACTEC 2003, p. 19).

Kenk's amphipod is known from six sites, not two as the petitioner asserts. Four of the sites are within Rock Creek Park in the District of Columbia, and two are in Montgomery County, MD: one in a county park and one on private property (Feller 2005, p. 11). The macroinvertebrate study (Feller 1997, pp. 8, 24–25, 37) that was referenced in the petition supplement does support the petitioners' claim that the East Spring and Sherill Drive Spring sites are highly threatened; however, the petition does not refer to any of the other four sites supporting the species. Although the information attributed to NPS regarding the threats to East Spring and Sherrill Drive Spring appears plausible, no specific source is cited by the petitioners, and this information relates to only two of the six known sites. The planned stormwater infrastructure project in the District of Columbia mentioned by the petitioners is unlikely to have an effect on this species, as it only affects a section of the Rock Creek drainage well downstream of all Kenk's amphipod sites (Yeaman 2001). The petitioners provide no citation to support their statement that there is an increasing level and frequency of flooding in Rock Creek and that this increased flooding is affecting Kenk's amphipod.

As stated by the petitioners, Virginia well amphipod is currently known to be extant at only a single location (Chazal and Hobson 2003, p. iii). The petition correctly states that there is an increasing number of activities occurring on Fort Belvoir, but presents no evidence that the referenced activities will affect the recharge area, as delineated by MACTEC (2003, p. 19), for the seep supporting this species. The one activity described in detail in the petition, the construction of the Army Museum, will occur near Route 1, approximately 2 miles (3.2 kilometers) from the seep and its recharge area (Keough 2001), making this activity unlikely to affect this species. Although the petitioners state that planning is underway for additional Potomac River bridges near Washington, DC, they provide no supporting information for this claim, and the Service is not aware of any planning currently underway (Zepp 2006).

As stated in the petition supplement, *Acanthocyclops columbiensis* is currently known to be extant at only two locations, Fort Stanton Park and Oxon Hill Farm Park, both in Prince Georges County, MD. The petitioners provided information concerning threats at the Oxon Hill site only; no information is provided for the Fort Stanton Park site. Their evidence concerning the threat of pollution of the Oxon Hill spring from public littering is speculative and not supported by any independent sources. The potential for impacts to this copepod from upgrades to the Washington (DC) Beltway and the construction of a new access road to Oxon Hill Farm Park (which are part of the Wilson Bridge Project) appears plausible, given the potential impact area for the project shown in the Environmental Impact Statement for the Wilson Bridge (Federal Highway Administration 2000, Figure 3–13). However, construction of these features is now complete, and we are aware of

no evidence that spring flows have been affected.

Based on the information in the petition and information readily available to us, we conclude that present or threatened destruction, modification, or curtailment of habitats or ranges has not affected the status of the three invertebrates to the extent that listing under the Act as a threatened or endangered species may be warranted.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioners assert that even moderate collection of the three species for scientific or educational purposes would pose a threat to these species due to their rarity and limited occurrence in small locales.

Evaluation of Information in the Petition

The petitioners provide no documentation that collecting for scientific or educational purposes is a threat, nor are we aware of any such information. Collections involved very low numbers of the three invertebrates, and effects on their populations are unlikely. Therefore, we find that the petition does not contain substantial scientific or commercial information concerning collecting for scientific or educational purposes to indicate that listing of the three invertebrates may be warranted.

C. Disease and Predation

The petitioners speculate that it is reasonable to assume that the three invertebrates could possibly be prey for large aquatic insects and their predacious larvae.

Evaluation of Information in the Petition

The petitioners provide no documentation that such predators are present in the spring-seep habitats of the three invertebrates or that their predation constitutes a threat. Therefore, we find that the petition does not present substantial scientific or commercial information concerning that disease or predation to indicate that listing of the three invertebrates may be warranted.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioners indicate that Kenk's amphipod receives some protection from NPS, which administers Rock Creek Park, but that such protection was not considered adequate for the federally listed Hay's Spring amphipod (*Stygobromus hayi*), which also occurs there. In support of the latter statement, the petitioners cite the rule listing the Hay's Spring amphipod (47 FR 5425, February 5, 1982).

The petitioners also assert that manmade or small natural events could destroy the only known habitat for Virginia well amphipod at Fort Belvoir and the Fort Stanton and Oxon Hill Farm habitats for *A. columbiensis*.

Evaluation of Information in the Petition

We also note that Hay's Spring amphipod was not known to occur on NPS lands (its only occurrence was on the adjacent National Zoological Park), so the protections (or lack thereof) that now apply to Rock Creek Park were not a consideration in the listing decision (47 FR 5425, February 5, 1982).

Therefore, we find that the petition does not present substantial scientific or commercial information concerning the inadequacy of existing regulatory mechanisms to indicate that listing of the three invertebrates may be warranted.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The petitioners indicate that ''any activities affecting the Upper Potomac and its tributaries, especially the ground water level and its characteristics could be detrimental to the survival of these three invertebrates.'' The petitioners also assert that manmade or small natural events could destroy the only known habitat for the Virginia well amphipod at Fort Belvoir and Fort Stanton and Oxon Hill Farm habitats for *A. columbiensis*

Evaluation of Information in the Petition

Activities in the Upper Potomac and its tributaries have previously been covered under Factor A. Except for the proposed Army Museum, discussed under Factor A, the petitioners have provided no documentation of specific threats at Fort Belvoir. Specific manmade or natural events potentially affecting *A. columbiensis* were discussed under Factors A and D.

No additional information or documentation is provided on this point by the petitioners. Therefore, we find that the petition does not present substantial scientific or commercial information concerning other natural or manmade factors, to indicate that listing of the three invertebrates may be warranted.

Significant Portion of the Range

Under section 4(b)(1) of the Act, we are required to make a finding as to whether the petition presents substantial information ''that the petitioned action may be warranted'' (emphasis added). The petition asserts that the three invertebrates (Kenk's amphipod, Virginia well amphipod, and *Acanthocyclops columbiensis*) require listing throughout their current, respective ranges; the petitioned action was to list each of the invertebrates throughout all of its range. As discussed above, we have determined that the petition did not present substantial information that the petitioned action may be warranted. Although we have no obligation under section 4(b)(1) to address the separate question of whether any of the three invertebrates is threatened or endangered in a significant portion of its range, we note that nothing in the petition or our files lead us to the conclusion that we should at this time, undertake a candidate assessment of any of the three invertebrates to determine whether it is threatened or endangered in a significant portion of its range. If the Service obtains sufficient information in the future that suggests that any of the three invertebrates may warrant listing due to threats in all or a significant portion of its range, we will initiate a candidate assessment, subject to availability of resources, and if appropriate, add the species to the candidate list or propose its listing where threatened or endangered.

Finding

We reviewed the petition, the petition supplement, and supporting information provided with these documents and evaluated that information in relation to other pertinent literature and information available in our files at the time of petition review. After this review and evaluation, we find the petition does not present substantial scientific or commercial information to demonstrate that listing of Kenk's amphipod, Virginia well amphipod, or the copepod *Acanthocyclops columbiensis* may be warranted at this time, nor do we have other information available to us that indicates that a listing proposal may be warranted. We encourage interested parties to continue to gather data that will assist with the conservation of these species. Information regarding the three invertebrates may be submitted to the Field Supervisor, Chesapeake Bay Field Office (see **ADDRESSES**), at any time.

References Cited

A complete list of all references cited herein is available upon request from the Chesapeake Bay Field Office (see **ADDRESSES**).

Author

The primary author of this document is the Chesapeake Bay Field Office, Annapolis, MD.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.).

Dated: August 31, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–17716 Filed 9–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV39

Endangered and Threatened Wildlife and Plants; Proposed Revision of Special Regulation for the Central Idaho and Yellowstone Area Nonessential Experimental Populations of Gray Wolves in the Northern Rocky Mountains

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft environmental assessment; reopening of comment period on proposed revision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) have prepared a draft environmental assessment (EA) of our proposal to revise the 2005 special rule for the central Idaho and Yellowstone area nonessential experimental populations of the gray wolf (*Canis lupus*) in the northern Rocky Mountains.

The Service is reopening the comment period for the proposed revisions to the 2005 special rule to allow all interested parties to comment simultaneously on the proposed revisions and the draft EA. If you have previously submitted comments on the proposed revisions, you do not need to resubmit them because those comments have been incorporated into the public record and will be fully considered in our final decision.

DATES: We will accept public comments on the draft EA and the proposal to revise the special regulation through October 11, 2007. Comments received after the closing date will not be considered in our final decision.

ADDRESSES:

Draft EA

You may obtain a copy of the draft EA by writing us at: U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, MT 59601 or by visiting our Web site at: *http://www.fws.gov/mountain-prairie/species/mammals/wolf/*. If you wish to comment on the draft EA, you may submit comments and materials, identified by ''RIN 1018–AV39,'' by any of the following methods:

1. You may mail or hand-deliver comments to the U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, MT 59601.

2. You may send comments by electronic mail (e-mail) directly to the Service at *EA-WolfRuleChange@fws.gov*. Include ''RIN 1018–AV39'' in the subject line of the message.

Proposal To Revise 10(j) Special Rule

You may also obtain a copy of the proposal to revise the 2005 special regulation by writing us at: U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, MT 59601 or by visiting our Web site at: *http://www.fws.gov/mountain-prairie/species/mammals/wolf/* or *http://www.fws.gov/mountain-prairie/species/mammals/wolf/72FR36942.pdf*. If you wish to comment on the proposal to revise the special regulation, you may submit comments and materials, identified by ''RIN 1018–AV39,'' by any of the following methods:

1. You may mail or hand deliver written comments to the U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, MT 59601.

2. You may send comments by electronic mail (e-mail) directly to the Service at *WolfRuleChange@fws.gov*. Include ''RIN 1018–AV39'' in the subject line of the message.

3. You may submit your comments through the Federal e-Rulemaking Portal—*http://www.regulations.gov*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone (406) 449–5225, extension 204. Persons who use a Telecommunications Device for the Deaf may call the Federal Information Relay Service at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from the proposal to revise the 2005 special rule (see 72 FR 36942, July 6, 2007) for the central Idaho and Yellowstone area populations of gray wolves in the northern Rocky Mountains will be as accurate and as effective as possible. Therefore, we are requesting data, comments, new information, or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party concerning the draft EA and proposed rule. We particularly seek comments concerning (1) our draft EA as it analyzes effects of the proposed rule; (2) our proposed modifications to the 2005 experimental population rule to allow private citizens in States with approved post-delisting wolf management plans to take wolves in the act of attacking their stock animals or dogs; and (3) our proposal to establish a reasonable process for States and Tribes with approved post-delisting wolf management plans to allow removal of wolves that are scientifically demonstrated to be impacting ungulate populations to the degree that they are not meeting respective State and Tribal management goals.

We specifically ask for comments regarding whether our draft EA accurately analyzes impacts and alternatives. We are also specifically requesting comments addressing whether the proposed rule modifications would: (1) Reasonably address conflicts between wolves and domestic animals or wild ungulate populations; (2) provide sufficient safeguards to prevent misuse of the modified rule; (3) provide an appropriate and transparent public process that ensures decisions are science-based; and (4) provide adequate guarantees that wolf recovery will not be compromised.

The draft EA has been prepared under the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). The purpose of the EA is to analyze potential effects to physical and biological resources and social and economic conditions that may result from revisions to the special regulation for the management of gray wolves introduced as nonessential experimental populations in the northern Rocky Mountains. Furthermore, the EA serves to assist in deciding whether the proposed action has a significant impact on the human environment. If we determine that the proposed action results in a significant impact, we will prepare an

environmental impact statement (EIS). Additionally, the EA describes the alternatives to the proposed revisions, affected environment, and environmental consequences of each of the alternatives.

Background

On November 22, 1994, the Service designated unoccupied portions of Idaho, Montana, and Wyoming as two nonessential experimental population areas for the gray wolf (59 FR 60252) under section 10(j) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). These special rules also provided management flexibility to address potential negative impacts and concerns regarding wolf reintroduction. In 1995 and 1996, the Service reintroduced gray wolves into the two experimental population areas.

This reintroduction and accompanying management programs greatly expanded the numbers and distribution of wolves in the northern Rocky Mountains. By the end of 2000, the northern Rocky Mountain population met its numerical and distributional recovery goals and continued to exceed it through 2006.

On January 6, 2005, the Service published a revised nonessential experimental population special rule increasing management flexibility for these populations (70 FR 1286; 50 CFR 17.84(i) and (n)). The 2005 special rule included a mechanism for States and Tribes to resolve conflicts when wolves were the primary cause of ''unacceptable impacts'' to wild ungulate populations. Our definition of ''*Unacceptable impact*'' set a threshold that has not provided the intended flexibility to allow States and Tribes to resolve conflicts between wolves and ungulate populations.

In order to set a more reasonable standard, the Service is proposing to redefine the term ''Unacceptable impact'' to achieve the intended management flexibility (72 FR 36942). Under the proposed definition, lethal control of wolves would be allowed if wolves are among the major causes of unacceptable impacts to ungulate populations, rather than wolf predation being the primary cause as in the 2005 special rule.

A State or Tribe must have a Service-approved post-delisting wolf management plan in place before proposing to lethally control wolves that are among the major causes of unacceptable impacts to ungulate populations. The State or Tribe then must prepare a science-based document that describes: (1) What data indicate that the ungulate herd is below management objectives, (2) what data indicate the impact of wolf predation on the ungulate population, (3) why wolf removal is a warranted solution to help restore the ungulate herd to State or Tribal management objectives, (4) the level and duration of wolf removal being proposed, and (5) how the State or Tribe will measure ungulate population response to wolf removal . The document also must identify possible remedies or conservation measures in addition to wolf removal. The State or Tribe must provide the opportunity for peer review and public comment on its proposal before submitting it to the Service. The Service then would determine whether such actions are scientifically based and would not reduce the wolf population below 20 breeding pair and 200 wolves in the state before authorizing lethal wolf removal.

The Service also proposes to allow legally present private citizens to take wolves that are in the act of attacking their ''stock animals'' (including horses, mules, donkeys, and llamas used to carry people or possessions) or dogs on private and public land (72 FR 36942, July 6, 2007).

National Environmental Policy Act

The draft EA describes the purpose of, and need for, the proposed modifications to the 2005 10(j) special regulation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA. The scope of the draft EA includes issues and resources within areas of the two nonessential experimental populations of the gray wolf in the northern Rocky Mountains.

The Service will use the EA to decide whether or not the 2005 10(j) special regulation will be modified as proposed, if the Proposed Action requires refinement, or if further analyses are needed through preparation of an EIS. If the Proposed Action as described, or with minimal changes, is selected and no further environmental analyses are needed, we will issue a Finding of No Significant Impact for the EA. The Service's analyses in the draft EA indicate that no significant impacts are likely to occur to wolf populations, ungulate populations, associated ecosystems, or socio-economic factors as a result of the proposed action.

The alternatives that the Service has considered include the following: (1) Alternative A (No Action Alternative); (2) Alternative B (Proposed Action and Preferred Alternative), which modifies the 2005 special regulation, establishing a more flexible definition of ''Unacceptable impact'' on ungulate populations resulting from wolf activity. Further modification is proposed to allow private citizens to take wolves that are in the act of attacking their stock animals or dogs; and (3) Alternative C, which modifies the definition of ''Unacceptable impact'' as in Alternative B, but not to include the modification regarding wolves in conflict with stock animals and dogs.

Authority: 16 U.S.C. 1531 *et seq.*; 83 Stat. 852; 42 U.S.C. 4321 *et seq.*

Dated: August 31, 2007.

Jim Mosher,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–17823 Filed 9–10–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 175
Tuesday, September 11, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Travel Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes to designate which routes (roads and trails) on federal lands administered by the Forest Service within the Black Hills National Forest are open to motorized travel. In so doing, the agency will comply with requirements of the Forest Service 2005 Travel Management Rule. Some areas were considered for cross-country travel designation, but no areas are included in this proposal. As a result of these travel management decisions, the Forest Service will produce a Motorized Vehicle Use Map (MVUM) depicting those routes on the Black Hills National Forest that will remain open to motorized travel. The MVUM will be the primary tool used to determine compliance and enforcement with motorized vehicle use designations on the ground. Those existing routes and other user-created routes not designated open on the MVUM will be legally closed to motorized travel. The decisions on motorized travel do not include over-snow travel or existing winter-use recreation.

DATES: Comments concerning the scope of the analysis must be received by November 9, 2007. The draft environmental impact statement is expected to be released in April 2008 and the final environmental impact statement is expected in September 2008.

ADDRESSES: Send written comments to Travel Management, Black Hills National Forest, 1019 North 5th Street, Custer, SD 57730. Electronic comments may be sent to *comments-rocky-mountain-black-hills@fs.fed.us*, with ''Travel Management'' in the subject line. Comments must be readable in Microsoft Word, rich text or pdf formats.

FOR FURTHER INFORMATION CONTACT: Tom Willems, Team Leader, at *twillems@fs.fed.us* or (605) 673–9200.

Purpose and Need for Action

The purpose and need for this action is to improve management of motorized vehicle use on National Forest System lands within the Black Hills National Forest in accordance with provisions of 36 CFR Parts 212, 251, 261, and *295 Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule.*

Proposed Action

The proposed action is to designate selected roads and trails open to motorized travel (wheeled vehicles only) on lands administered by the Black Hills National Forest. Where it is appropriate and necessary, the designations will also set specific seasons of use and type of use for those roads and trails. In doing so, the Forest will comply with requirements of the Forest Service 2005 Travel Management Rule (36 CFR part 212). Some areas were considered for cross-country travel designation, but no areas are included in this proposal. As a result of these travel management decisions, the Black Hills National Forest will produce a Motor Vehicle Use Map (MVUM) depicting those routes and areas on the Forest that will remain open to motorized travel. The MVUM will be the primary tool used to determine compliance and enforcement with motorized travel designations on the ground. Those existing Forest Service routes, as well as other user-created routes, not designated open on the MVUM will be legally closed to motorized travel.

In order to implement the proposed action, it would be necessary to amend some existing direction and terminology in the Revised Forest Plan for the Black Hills National Forest. These changes to Plan direction would be enduring changes and would apply to this decision and all subsequent project decisions unless and until further modified.

Proposed travel management-related changes to the *1997 Black Hills National Forest Revised Land and Resource Management Plan* are based on elements of the travel management rule, public meeting comments, District and Core Travel Management Team recommendations, Forest Leadership Team decisions, and the Black Hills National Forest Advisory Board (NFAB), Travel Management Subcommittee, recommendations. The goal is to provide a transportation system that is within the Black Hills National Forest's ability to manage (operate and maintain) and provides a variety of users with a diverse experience while minimizing impacts to resources.

The proposed transportation system open to motorized travel under this proposal would be a total of 3,998 miles. This is a change of 298 miles from the existing condition of approximately 3,700 miles. New project decisions could change this system without amending the Forest Plan.

The proposed transportation system was developed with extensive public input over a period of three years and addresses a variety of concerns, including access to private lands within the National Forest boundary, funding, access to the Forest for motorized and non-motorized recreation, and roads under the jurisdiction of county, state, and other federal agencies. Specifically, this transportation system would allow for a balance between various recreational uses of the Forest. It would provide for various forms of reasonable motorized use on a designated system of routes.

The proposed transportation system is depicted in detail on the *Black Hills National Forest Travel Management Plan Proposed Action* map (Map) located on the Forest Web site: *http://www.fs.fed.us/r2/blackhills/recreation/travel_management/ohv.shtml.* Other existing routes not shown on this map would not be open to public motorized travel. New routes would not be created except by written decision of an authorized Forest Service official. Unauthorized new routes would not be approved for public motorized travel. If this proposal is selected for implementation, the information on this map would become the Motor Vehicle Use Map (MVUM) required by regulation and agency policy.

A proposed Off Highway Vehicle (OHV) trail system is a significant element of the total transportation system in this proposal. It would accommodate the desire for a mix of

different motorized recreation uses by a variety of motorized vehicles including All Terrain Vehicles (ATVs), motorcycles, and full-size off-road vehicles. The system would provide for a variety of different uses, including multi-scale looped routes, destination sites, and challenges such as rock crawling. This proposal follows the recommendation of the NFAB Travel Subcommittee.

This proposal is preparatory to a system of looped routes at several scales, with some dead-end routes leading to destination sites (such as cultural or special activity sites), or portal sites at municipal boundaries. Some of these loops are single-type use, but the majority are designated for mixed use. Mixed use is defined as use of a designated route by both highway legal and non-highway legal motor vehicles.

The proposed OHV trail system is depicted on the Map. Some roads and trails on this system are designated to accommodate more than one type of use. These mixed-use routes are designated on the Map. If this proposal is selected for implementation, the information on this map would become the Motor Vehicle Use Map (MVUM) required by regulation and agency policy. Only those routes shown on the MVUM would be authorized for motorized travel.

Under this proposal most of the route mileage would occur on existing Forest System routes currently open to motorized travel. However, this proposal also includes construction of short connector routes and designation of some currently unauthorized routes between existing Forest System routes.

It is our long-term goal to locate the majority of these designated routes away from communities and subdivisions. This would help reduce noise impacts to residents, as well as reduce the occurrence of single or privileged access by adjacent landowners. However, use on some routes would probably be audible to those living nearby.

Approximately 2,213 miles of Forest System roads would be designated for mixed-use, as ''roads open to all vehicles,'' and considered part of the proposed OHV Trail System. Forest System roads not considered for mixed-use would be designated as ''roads open to highway legal vehicles only.'' This would apply to approximately 1,075 miles of Forest Service roads that were not proposed to be part of the OHV Trail System.

This proposal would allow cross-country motorized game retrieval of legally harvested downed elk, within 300 feet from the centerline of specific designated routes, providing resource damage does not occur. Designated routes would be limited to only those routes located within management areas where off-route motorized travel is currently allowed by the Forest Plan. This includes and is limited to routes located within Management Areas 5.1, 5.1A, 5.3A, and 5.6. Game retrieval would not be allowed along routes located in management areas that do not currently allow off-route motorized travel, such as Wilderness, Norbeck Wildlife Preserve, Research Natural Areas, and Botanical Areas. The intent of this proposal would be to provide reasonable access to downed elk that are difficult to move long distances without motorized assistance. Motorized cross-country retrieval of deer, bighorn sheep, mountain goats, pronghorn, turkey, and other game animals would not be allowed under this proposal because these animals are small enough to retrieve without motorized assistance. This proposal is consistent with the recommendation of the NFAB Travel Subcommittee, the Rocky Mountain Region Consistency letter, 36CFR Part 212.51(8)(b), and recommendations from the South Dakota Department of Game, Fish and Parks. Designated routes off of which game retrieval would be allowed will be delineated on the MVUM.

This proposal would allow dispersed camping off designated routes, in certain areas, under certain conditions. In all cases where allowed, motorized vehicles would be restricted to within 100 feet for dispersed camping from the centerline of specific designated routes, using the most direct route to the camp site. This would allow for reasonable recreational use of the Forest while minimizing the potential for resource damage. This proposal follows the recommendation of the NFAB Travel Subcommittee. Designated routes along which dispersed camping would be allowed will be shown on the MVUM.

Under this proposal, off-road parking would be allowed along designated routes under certain conditions. Primary considerations in designating this policy were user safety and resource protection. Draft proposed FSM direction would allow parking off designated routes, not to exceed a distance of one vehicle length.

Public comments by other recreationists and private landowners during the past three years have identified excessive OHV sound as a major concern within the Forest. To adequately address these potential user conflicts in the future, a stationary sound limit of 96 dB(A) is proposed for OHVs operating on lands administered by the Black Hills National Forest. The Society of American Engineers (SAE) J1287 stationary sound test procedure will be used for determining compliance with OHV sound-level standards.

Responsible Official

The Responsible Official is Craig Bobzien, Forest Supervisor, Black Hills National Forest, 1019 North Street, Custer, SD 57730.

Nature of Decision To Be Made

Based on the purpose and need for the proposed action, the Forest Supervisor will evaluate the Proposed Action and other alternatives in order to make the following decisions for the specific National Forest System lands under his authority:

- Whether to designate certain routes as open to the public for motorized use;
- Whether to allow game retrieval; dispersed camping; off-road parking;
- The conditions of any such use, including the allowed season and/or type of use for those routes open to motorized travel;
- Whether to amend the Forest Plan direction for travel management.

Federal land managers are directed (Executive Order 11644, 36 CFR 212, and 43 CFR 8342.1) to ensure that the use of motorized vehicles and off-road vehicles will be controlled and directed so as to protect the resources of those lands, to promote the safety of users, minimize conflicts among the various uses of the federal lands, and to provide for public use of routes designated as open.

Public Involvement

Preliminary public involvement was initiated in 2003 in an effort to familiarize the public and stakeholders throughout the Black Hills region with the objectives of travel management. Between 2003 and 2007, the Black Hills National Forest hosted and participated in numerous public meetings and workshops in Wyoming and South Dakota.

Between 2004 and 2006, the OHV and Travel Management subcommittees of the Black Hills National Forest Advisory Board conducted a number of public meetings to solicit general comments on travel management. The meetings were held in South Dakota and Wyoming to discuss and review Subcommittee objectives and the current Forest Service national OHV policy direction, and outline plans for the future. The purpose of these meetings was to gather input to help develop recommendations for future OHV policy planning.

The Travel Management subcommittee also distributed a *User*

Needs Assessment Questionaire solicit comments from both OHV and non-OHV users to evaluate the potential for establishing a designated Off-Highway Vehicle (OHV) trail system on the Black Hills National Forest. The 559 comments submitted helped the Subcommittee define opportunities for an OHV trail system and understand potential conflicts with other users.

The National Off-Highway Vehicle Conservation Council (NOHVCC) in cooperation with the Black Hills National Forest conducted an OHV Route Designation Workshop in October 2006 for agency personnel and the public. The purpose of this workshop was to assist the Forest Service and the public in effective implementation of the USFS Travel Management Rule.

Four ''Travelways'' Workshops were conducted by the Forest during November, 2006. The purpose of these workshops was to gather public input and ideas for the development of a proposed action. A product from these workshops was a collection of forest site specific information from participants after they completed a mapping exercise.

The public was also asked to provide input to the Forest Service on routes they wanted to remain open and/or those routes that may be in conflict with other desired conditions sought by the public on National Forest System lands. This initial public involvement ended in 2007 with the agency receiving numerous comments on individual routes, a large number of general comments, and some area-wide comments. This preliminary public input helped the Forest Service to develop this proposed action.

Scoping Process

The Forest Service will conduct meetings to solicit comments from the public and interested parties on this proposal.

The meetings are scheduled from 7 p.m. to 9 p.m. at the following locations:

Sundance, WY—September 10, 2007 (Monday), Crook County Courthouse, 309 Cleveland Street.

Rapid City, SD—September 11, 2007 (Tuesday), Best Western Ramkota Hotel (Rushmore Room), 2111 North LaCrosse Street.

Spearfish, SD—September 12, 2007 (Wednesday), Wilbur S. Tretheway Pavilion, 115 South Canyon Street.

Custer SD—September 13, 2007 (Thursday), Crazy Horse Memorial (Mountain View Room), Avenue of the Chiefs.

Notices of those meetings and requests for comments have been published in local newspapers.

Based on comments received as a result of this notice and after the Forest Service has conducted public meetings and afforded the public sufficient time to respond to the proposed action, the agency will use the public scoping comments along with resource related input for the interdisciplinary team and other agency resource specialists to develop a set of significant issues to carry forward into the environmental analysis process.

Preliminary Issues

The agency has received some indications of potential issues from the initial public involvement process conducted during the last several years. Those expected issues include:

(1) Resource damage caused by inappropriate types of vehicle use: (e.g. motorized vehicles in fragile or steep terrain), Proliferation of routes (e.g. parallel trails or roads, illegal travel off designated routes), and unrestricted season of use (e.g. routes open to motorized travel too long into the wet or muddy seasons).

(2) Disturbing or harming wildlife by using routes in important or critical wildlife habitat areas, too many roads in wildlife habitat areas, and disturbance to wildlife during critical lifecycle periods.

(3) Concerns about recreational opportunities, including loss of recreational opportunities when existing routes are closed to motorized travel, loss of semi-primitive and primitive recreational opportunity if more routes or areas are open to motorized travel, and how to appropriately and reasonably accommodate the fast growing number of motorized users desiring to use federal lands for recreational riding of OHVs.

(4) Concerns on how the system might be designed to facilitate effective enforcement.

(5) Safety concerns on routes where multiple vehicle types (e.g. full-sized trucks and cars, ATVs, motorcycles) are allowed.

The Forest Service recognizes that this list of issues is not complete and will be further defined and refined as scoping continues. The Forest service intends to develop a comprehensive list of significant issues before the full range of alternatives is developed and the environmental analysis is begun.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement for the Black Hills National Forest Travel Management Plan.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 5, 2007.

Dennis Jaeger,

Deputy Forest Supervisor, Black Hills National Forest.

[FR Doc. 07–4427 Filed 9–10–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra National Forest, California, Sierra National Forest Motorized Travel Management EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Sierra National Forest (Sierra NF) will prepare an Environmental Impact Statement to disclose the impacts associated with the following proposed actions: 1. The prohibition of wheeled motorized vehicle travel off designated NFS roads, NFS trails and areas by the public except as allowed by permit or other authorization. 2. The addition of approximately 54 miles of existing unauthorized tracks to the current system of National Forest System (NFS) motorized trails, the permanent conversion of 72 miles of NFS Roads to NFS Trails, the management of 61 miles of NFS Roads as NFS Trails and the addition of six acres for motorized use. 3. The changing of the allowable use or season of use on approximately 970 miles of existing NFS Roads and closing approximately 200 miles of existing NFS Roads to public access usless allowed by permit or other authorization.

DATES: The comment period on the proposed action will extend 45 days from the date the Notice of Intent is published in the **Federal Register**.

Completion of the Draft Environmental Impact Statement (DEIS) is expected in November 2007 and the Final Environmental Impact Statement (FEIS) is expected in January 2008.

ADDRESSES: Send written comments to: Travel Management Team, Sierra NF, 1600 Tollhouse Rd., Clovis, CA 93611.

FOR FURTHER INFORMATION CONTACT: Tom Lowe, Sierra NF, 1600 Tollhouse Rd., Clovis, CA 93611; Phone: (559) 297–0706 extension 4840. E-mail: *sierra.route.designation@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Over the past few decades, the availability and capability of motorized vehicles, particularly off-highway vehicles (OHVs) and sport utility vehicles (SUVs) has increased tremendously. Nationally, the number of OHV users has climbed sevenfold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000. California is experiencing the highest level of OHV use of any state in the nation. There were 786,914 ATVs and OHV motorcycles registered in 2004, up 330% since 1980. Annual sales of ATVs and OHV motorcycles in California were the highest in the U.S. for the last 5 years. Four-wheel drive vehicle sales in California also increased by 1500% to 3,046,866 from 1989 to 2002. (Off-Highway Vehicle Recreation in the United States, Regions and States: A National Report from a National Survey on Recreation and the Environment, USDA Forest Service, 2005).

Unmanaged OHV use has resulted in unplanned roads and trails, erosion, watershed and habitat degradation, and impacts to cultural resource sites. Compaction and erosion are the primary effects of OHV use on soils. Riparian areas and aquatic dependent species are particularly vulnerable to OHV use. Unmanaged recreation, including impacts from OHVs, is one of ''Four Key Threats Facing the Nation's Forests and Grasslands.'' (USDA Forest Service, June 2004).

On August 11, 2003, the Pacific Southwest Region of the Forest Service entered into a Memorandum of Intent (MOI) with the California Off-Highway Motor Vehicle Recreation Commission, and the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation. That MOI set in motion a region-wide effort to ''Designate OHV roads, trails, and any specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California by 2007.''

On November 9, 2005, the Forest Service published final travel management regulations in the **Federal Register** (FR Vol. 70, No. 216–Nov. 9, 2005, pp. 68264–68291). This final Travel Management Rule requires designation of those roads, trails, and areas that are open to motor vehicle use on National Forests. Designations will be made by class of vehicle and, if appropriate, by time of year. The final rule prohibits the use of motor vehicles off the designated system as well as use of motor vehicles on routes and in areas that are not designated.

On some NFS lands, long managed as open to cross-country motor vehicle travel, repeated use has resulted in unplanned, unauthorized tracks. These tracks generally developed without environmental analysis or public involvement, and do not have the same status as NFS roads and NFS trails included in the forest transportation system. Nevertheless, some unauthorized tracks are well-sited, provide excellent opportunities for outdoor recreation by motorized and non-motorized users, and would enhance the National Forest system of designated roads, trails and areas. Other unauthorized tracks are poorly located and cause unacceptable impacts. Only NFS roads and NFS trails can be designated for wheeled motorized vehicle use. In order for an unauthorized track to be designated, it must first be added to the forest transportation system.

In accordance with the MOI, the Sierra NF completed an inventory of unauthorized tracks on NFS lands in August of 2006, identifying approximately 520 miles of known unauthorized tracks. The Sierra NF then used an interdisciplinary process to conduct a Travel Analysis including working with the public to determine whether any of the unauthorized tracks should be proposed for addition to the Sierra NF transportation system. Roads, trails and areas that are currently part of the Sierra NF transportation system and are open to wheeled motorized vehicle travel will remain designated for such use except as described below under Proposed Action. This proposal focuses on the prohibition of wheeled motorized vehicle travel off designated routes and needed changes to the Sierra NF transportation system, including the addition of some unauthorized routes to the Sierra NF transportation system and minor changes to the existing transportation systems. The proposed action is being carried forward in accordance with the Travel Management Rule (36 CFR part 212).

In accordance with the rule, following a decision on this proposal, the Sierra NF will publish a Motor Vehicle Use Map (MVUM) identifying all Sierra NF roads, trails and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Purpose and Need for Action

The following needs have been identified for this proposal:

1. There is a need for regulation of unmanaged wheeled motorized vehicle travel by the public. Currently, wheeled

motorized vehicle travel by the public is allowed off designated routes below 6,800 feet elevation. In their enjoyment of the Sierra NF, motorized vehicle users have created numerous unauthorized routes. The number of such routes continues to grow each year with many routes having environmental impacts and safety concerns that have not been addressed. The Travel Management Rule, 36 CFR part 212), provides policy for ending this trend of unauthorized route proliferation and managing the Forest transportation system in a sustainable manner through designation of motorized NFS roads, trails and areas, and the prohibition of cross-country travel.

2. There is a need for limited changes and additions to the Sierra NF transportation system to:

2.1. Provide wheeled motorized access to dispersed recreation opportunities (camping, hunting, fishing, hiking, horseback riding, etc.)

2.2. Provide a diversity of wheeled motorized recreation opportunities (4x4 Vehicles, motorcyles, ATVs, passenger vehicles, etc.)

It is Forest Service policy to provide a diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest recreation role and land capability (FSM 2353.03(2)).

In meeting these needs the proposed action must also achieve the following purposes:

A. Avoid impacts to cultural resources.

B. Provide for public safety.

C. Provide for a diversity of recreational opportunities.

D. Assure adequate access to public and private lands.

E. Provide for adequate maintenance and administration of thr transportation system based on availability of resources and funding to do so.

F. Minimize damage to soil, vegetation and other forest resources.

G. Avoid harassment of wildlife and significant disruption of wildlife habitat.

H. Minimize conflicts between wheeled motor vehicles and existing or proposed recreational uses of NFS lands.

I. Minimize conflicts among different classes of wheeled motor vehicle uses of NFS lands or neighboring federal lands.

J. Assure compatibility of wheeled motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, etc.

K. Have valid existing rights of use and access (rights-of-way).

Proposed Action

1. Prohibition of wheeled motorized vehicle travel off the designated NFS roads, NFS trails and areas by the public except as allowed by permit or other authorization.

2. Additions to the National Forest Transportation System—The Sierra NF currently manages and maintains approximately 2,530 miles of NFS roads and no NFS motorized trails. Based on the stated purpose and need for action and as a result of the recent Travel Analysis process; the Sierra NF proposes to add no NFS roads; add approximately 54 miles of new motorized trail; permanently convert 72 miles of NFS Roads to NFS Trails; manage 71 miles of NFS Roads as NFS Trails; and add approximately six acres of new motorized use areas.

PROPOSED ADDITIONS TO MOTORIZED TRAILS SYSTEM

Trail name	Proposed use	Length	Season of use	District
Battalion	Open to All Vehicles	0.50	May 20 to Dec 01	Bass Lake.
Chiquito South	Open to All Vehicles	0.35	May 20 to Dec 01	Bass Lake.
Lost Lake	Open to All Vehicles	0.58	Year Round	Bass Lake.
Deadman Miami	Open to Motorcycles Only	0.83	Apr 20 to Dec 01	Bass Lake.
Footman	Open to Motorcycles Only	1.62	May 20 to Dec 01	Bass Lake.
Beasore	Open to Vehicles Less Than 50″	0.79	May 20 to Dec 01	Bass Lake.
BLT Miami	Open to Vehicles Less Than 50″	0.12	Apr 20 to Dec 01	Bass Lake.
Browns	Open to Vehicles Less Than 50″	0.77	Apr 20 to Dec 01	Bass Lake.
Cedar Loop	Open to Vehicles Less Than 50″	1.41	Year Round	Bass Lake.
Central	Open to Vehicles Less Than 50″	0.32	Apr 20 to Dec 01	Bass Lake.
Chiquito North	Open to Vehicles Less Than 50″	0.72	May 20 to Dec 01	Bass Lake.
Cody E Miami	Open to Vehicles Less Than 50″	0.79	Apr 20 to Dec 01	Bass Lake.
Cody W Miami	Open to Vehicles Less Than 50″	1.62	Apr 20 to Dec 01	Bass Lake.
Express	Open to Vehicles Less Than 50″	1.01	Apr 20 to Dec 01	Bass Lake.
E-Zee Miami	Open to Vehicles Less Than 50″	0.65	May 20 to Dec 01	Bass Lake.
Greys	Open to Vehicles Less Than 50″	0.56	Year Round	Bass Lake.
Hail	Open to Vehicles Less Than 50″	0.82	Apr 20 to Dec 01	Bass Lake.
Halfmile Miami	Open to Vehicles Less Than 50″	0.62	Apr 20 to Dec 01	Bass Lake.
Johnson	Open to Vehicles Less Than 50″	0.18	Year Round	Bass Lake.
Martin Miami	Open to Vehicles Less Than 50″	0.50	Apr 20 to Dec 01	Bass Lake.
Miami	Open to Vehicles Less Than 50″	1.72	May 20 to Dec 01	Bass Lake.
MMTB Miami	Open to Vehicles Less Than 50″	2.27	Apr 20 to Dec 01	Bass Lake.
Power Loop E	Open to Vehicles Less Than 50″	0.25	Apr 20 to Dec 01	Bass Lake.
Power Loop N	Open to Vehicles Less Than 50″	0.82	Apr 20 to Dec 01	Bass Lake.
Powerline	Open to Vehicles Less Than 50″	0.70	May 20 to Dec 01	Bass Lake.
Quartz Mtn	Open to Vehicles Less Than 50″	0.64	Jun 15 to Nov 01	Bass Lake.
Rock Creek	Open to Vehicles Less Than 50″	0.53	Apr 20 to Dec 01	Bass Lake.
Rush	Open to Vehicles Less Than 50″	1.73	May 20 to Dec 01	Bass Lake.
Shady E Miami	Open to Vehicles Less Than 50″	0.35	Apr 20 to Dec 01	Bass Lake.
Shady Miami	Open to Vehicles Less Than 50″	2.38	May 20 to Dec 01	Bass Lake.
Soquel	Open to Vehicles Less Than 50″	0.68	Apr 20 to Dec 01	Bass Lake.
Stagecoach	Open to Vehicles Less Than 50″	3.12	Apr 20 to Dec 01	Bass Lake.
Summit	Open to Vehicles Less Than 50″	1.05	Year Round	Bass Lake.
Sunflower Miami	Open to Vehicles Less Than 50″	0.97	Year Round	Bass Lake.
Texas	Open to Vehicles Less Than 50″	0.64	Year Round	Bass Lake.
Whiskey	Open to Vehicles Less Than 50″	1.58	Year Round	Bass Lake.
45 Cutoff	Open to All Vehicles	0.69	May 20 to Dec 01	High Sierra.

PROPOSED ADDITIONS TO MOTORIZED TRAILS SYSTEM—Continued

Trail name	Proposed use	Length	Season of use	District
Basecamp	Open to All Vehicles	1.07	Year Round	High Sierra.
Bearpaw	Open to All Vehicles	0.64	Year Round	High Sierra.
Boneyard	Open to All Vehicles	0.48	Year Round	High Sierra.
Buck	Open to All Vehicles	0.10	Apr 20 to Dec 01	High Sierra.
Campfire	Open to All Vehicles	0.17	Year Round	High Sierra.
Campout	Open to All Vehicles	0.09	Year Round	High Sierra.
Dayuse	Open to All Vehicles	0.16	Year Round	High Sierra.
Doe	Open to All Vehicles	0.29	Year Round	High Sierra.
Dry Camp	Open to All Vehicles	0.07	Year Round	High Sierra.
Fawn	Open to All Vehicles	0.11	Year Round	High Sierra.
Horseshoe	Open to All Vehicles	0.13	Year Round	High Sierra.
Kaiser	Open to All Vehicles	0.02	Year Round	High Sierra.
Lower Bald	Open to All Vehicles	3.34	Year Round	High Sierra.
Lower Dinkey	Open to All Vehicles	0.44	Year Round	High Sierra.
North Bald	Open to All Vehicles	0.66	May 20 to Dec 01	High Sierra.
One Mile	Open to All Vehicles	0.26	Year Round	High Sierra.
Racoon	Open to All Vehicles	0.71	Year Round	High Sierra.
Ridgeline	Open to All Vehicles	0.68	Year Round	High Sierra.
Ridgetop	Open to All Vehicles	1.08	Year Round	High Sierra.
Rockhopper	Open to All Vehicles	1.15	Apr 20 to Dec 01	High Sierra.
Rockslide	Open to All Vehicles	1.20	Year Round	High Sierra.
Sand Flats	Open to All Vehicles	0.27	Year Round	High Sierra.
South Fort	Open to All Vehicles	0.13	Year Round	High Sierra.
Spike	Open to All Vehicles	0.05	Year Round	High Sierra.
Streamside	Open to All Vehicles	0.14	Year Round	High Sierra.
Tamarack	Open to All Vehicles	0.06	Year Round	High Sierra.
Upper Bald	Open to All Vehicles	2.14	Apr 20 to Dec 01	High Sierra.
Upper Dinkey	Open to All Vehicles	0.19	Year Round	High Sierra.
Creekside	Open to Vehicles Less Than 50″	1.91	Apr 20 to Dec 01	High Sierra.
Roadside	Open to Vehicles Less Than 50″	1.37	Year Round	High Sierra.

CONVERT FROM NFS ROADS TO NFS TRAILS

Road/trail No.	Beg MP	End MP	Vehicle class	Season of use	District
HITE COVE OHV ROUTE (03S002)	1.25	4.95	Open to All Vehicles	Apr 20 to Dec 01	Bass Lake.
STAR LAKES OHV ROUTE (05S026)	0.6	2.9	Open to All Vehicles	Year Round	Bass Lake.
GREEN MTN OHV ROUTE (05S030X)	0	2	Open to All Vehicles	Year Round	Bass Lake.
CATTLE MTN OHV ROUTE (05S030XA)	0	2	Open to All Vehicles	Year Round	Bass Lake.
RED TOP OHV ROUTE (05S070A)	0	1.2	Open to All Vehicles	Year Round	Bass Lake.
GLOBE ROCK AA SPUR (05S070AA)	0	0.66	Open to All Vehicles	Year Round	Bass Lake.
IRON LAKES OHV ROUTE (05S092A)	0	0.6	Open to All Vehicles	Year Round	Bass Lake.
DUSY-ERSHIM OHV ROUTE (07S032)	1.2	25.2	Open to All Vehicles	Jul 15 to Nov 01	High Sierra.
COYOTE OHV ROUTE (08S042)	3.2	6.1	Open to All Vehicles	Jun 01 to Nov 01	High Sierra.
STRAWBERRY OHV ROUTE (08S042X)	0	2.5	Open to All Vehicles	Jun 01 to Nov 01	High Sierra.
WEST LAKE OHV ROUTE (08S042XA)	0	0.3	Open to All Vehicles	Jun 01 to Nov 01	High Sierra.
MIRROR LAKE OHV ROUTE (08S042XB)	0	0.7	Open to All Vehicles	Jun 01 to Nov 01	High Sierra.
BREWER LAKE OHV ROUTE (09S034)	0	2.1	Open to All Vehicles	Jun 01 to Nov 01	High Sierra.
BALD MTN OHV ROUTE (09S043)	0	4.5	Open to All Vehicles	Year Round	High Sierra.
BALD OHV B (09S043B)	0	1.8	Open to All Vehicles	May 20 to Dec 01	High Sierra.
PEEP OHV (09S043A)	0	0.2	Open to All Vehicles	May 20 to Dec 01	High Sierra.
TRI-TIP OHV ROUTE (09S091)	0	1.3	Open to All Vehicles	May 20 to Dec 01	High Sierra.
SWAMP LAKE OHV ROUTE (10S015)	0	13.8	Open to All Vehicles	Jun 15 to Nov 01	High Sierra.
SPANISH LAKE OHV ROUTE (11S007A)	0	5.7	Open to All Vehicles	Aug 01 to Nov 01	High Sierra.

NFS ROADS TO BE MANAGED AS NFS TRAILS

Road/Trail No.	Beg Mp	End Mp	Vehicle class	Season of use	District
50S009XA	0	0.6	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
50S013G	0	0.4	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
50S020X	0	2.5	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
50S023	0	0.9	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
50S027	0	0.4	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
50S024C	0	0.6	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
06S027M	0	0.3	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
06S034	0	1	Open to All Vehicles	May 20 to Dec 01	High Sierra.
06S034A	0	0.9	Open to All Vehicles	May 20 to Dec 01	High Sierra.
06S037	0	0.7	Open to All Vehicles	May 20 to Dec 01	High Sierra.
06S037A	0	0.1	Open to All Vehicles	May 20 to Dec 01	High Sierra.

NFS ROADS TO BE MANAGED AS NFS TRAILS—Continued

Road/Trail No.	Beg Mp	End Mp	Vehicle class	Season of use	District
06S040XA	0	1.2	Open to All Vehicles	May 20 to Dec 01	Bass Lake.
06S042G	0	0.6	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
06S043A	0	0.5	Open to All Vehicles	Jun 15 to Oct 01	High Sierra.
06S044XB	0	1.5	Open to All Vehicles	Jun 15 to Oct 01	High Sierra.
06S048A	0	0.3	Open to All Vehicles	May 20 to Dec 01	High Sierra.
06S086B	0	0.4	Open to All Vehicles	May 20 to Dec 01	High Sierra.
06S086C	0	0.9	Open to All Vehicles	May 20 to Dec 01	High Sierra.
06S089YA	0	0.6	Open to All Vehicles	Jun 15 to Oct 01	High Sierra.
07S005SA	0	0.4	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
07S008A	0	0.7	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
07S008B	0	0.5	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
07S012	0	1.2	Open to All Vehicles	May 20 to Dec 01	High Sierra.
07S095	0	0.9	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
07S095A	0	0.2	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
07S099	0	0.2	Open to All Vehicles	May 20 to Dec 01	High Sierra.
07S099A	0	0.2	Open to All Vehicles	May 20 to Dec 01	High Sierra.
07S303A	0	0.3	Open to All Vehicles	May 20 to Dec 01	High Sierra.
07S500	0	0.5	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
07S520A	0	1.1	Open to Vehicles Less Than 50″	Year Round	Bass Lake.
08S056	0	1.1	Open to All Vehicles	May 20 to Dec 01	High Sierra.
08S057	0	0.4	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
08S098G	0	0.7	Open to All Vehicles	May 20 to Dec 01	High Sierra.
09S005E	0	0.5	Open to All Vehicles	Aug 15 to Dec 01	High Sierra.
09S006A	0	0.5	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S009B	0	1.2	Open to All Vehicles	May 20 to Dec 01	High Sierra.
09S009C	0	0.6	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S009K	0	0.1	Open to All Vehicles	Year Round	High Sierra.
09S014A	0	1	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S015	0	0.7	Open to All Vehicles	May 20 to Dec 01	High Sierra.
09S034A	0	0.7	Open to All Vehicles	Jun 01 to Nov 01	High Sierra.
09S034B	0	1	Open to All Vehicles	Jun 01 to Nov 01	High Sierra.
09S066A	0	0.4	Open to All Vehicles	May 20 to Dec 01	High Sierra.
09S069C	0	0.5	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S072	0.8	2.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S072A	0	1.3	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S090	0	0.7	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S090A	0	0.5	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S090B	0	0.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S404	0.1	0.8	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S404A	0	0.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
09S404B	0	0.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S013A	0	1	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S013G	0	0.4	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S016A	0	0.3	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S016E	0	0.3	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S016H	0	0.7	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S016M	0	0.11	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S016NA	0	0.4	Open to All Vehicles	Aug 15 to Dec 01	High Sierra.
10S018V	0	0.7	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S020E	0	0.3	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S036	4.6	5.1	Open to All Vehicles	Jun 15 to Oct 01	High Sierra.
10S036B	0	0.8	Open to All Vehicles	Jun 15 to Oct 01	High Sierra.
10S036DA	0	0.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S066C	0	1.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S066E	0	1.3	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S066H	0	0.6	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S066J	0	0.6	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S066JA	0	0.6	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S066L	0	0.5	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S066N	0	0.7	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S069C	0	0.3	Open to All Vehicles	Year Round	High Sierra.
10S069D	0	0.4	Open to All Vehicles	Year Round	High Sierra.
10S070BA	0	0.4	Open to All Vehicles	Year Round	High Sierra.
10S070T	0	0.3	Open to All Vehicles	Year Round	High Sierra.
10S075D	0	0.5	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S090	0	3.4	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S098	0	0.4	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S099	0	2.3	Open to All Vehicles	May 20 to Dec 01	High Sierra.
10S099A	0	1.1	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S099B	0	1.1	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S407	0	0.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
10S415	0	0.3	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.

NFS ROADS TO BE MANAGED AS NFS TRAILS—Continued

Road/Trail No.	Beg Mp	End Mp	Vehicle class	Season of use	District
10S416	0	0.3	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
11S004C	0	0.4	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
11S010B	0	0.2	Open to All Vehicles	May 20 to Dec 01	High Sierra.
11S010F	0	0.6	Open to All Vehicles	May 20 to Dec 01	High Sierra.
11S023D	0	0.5	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
11S023F	0.5	1.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
11S040G	0	0.5	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
11S040J	0	0.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
11S040N	0	0.7	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.
11S040XA	0	0.2	Open to All Vehicles	Apr 20 to Dec 01	High Sierra.

PROPOSED MOTORIZED USE AREA ADDITIONS

Name	Area	Proposed use	Season of use
Tule Mdw Use Area	6 Acres	Open to All Vehicles	May 20 to Dec 1.

3. Changes of the allowable of use on the NFS Roads—It is proposed to restrict the type of vehicular use and/or the period of use on approximately 970 miles of existing NFS Roads. And to permanently close 200 miles of existing NFS Roads to public access unless allowed by permit or other authorization. [See Internet, *http://www.fs.us.fed/r5/sierra/projects/ohv,* for complete tables.]

Maps and tables describing in detail both the Sierra NF transportation system and the proposed action can found at *http://www.fs.fed.us/r5/sierra/projects/ohv.* In addition, maps will be available for viewing at:

Supervisor's Office, 1600 Tollhouse Rd., Clovis, CA.

Bass Lake Ranger District, 57003 Road 225, North Fork, CA.

High Sierra Ranger District, 29688 Auberry Road, Prather, CA.

Responsible Official

Edward C. Cole, Forest Supervisor, 1600 Tollhouse Rd., Clovis, CA 93611.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to the existing Sierra NF Transportation System and prohibit cross country wheeled motorized vehicle travel by the public off the designated system. Once the decision is made, the Sierra NF will publish a Motor Vehicle Use Map (MVUM) identifying the roads, trails and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Scoping Process

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Public Meetings will be held from 6:30 p.m. to 9 p.m. at the following locations:

Mariposa: Sept 24, at the Best Western Yosemite Way, 4999 State Highway 49.

Clovis: Sept 26, at the Sierra NF Headquaters. 1600 Tollhouse Road.

Prather: Sept 27, at the High Sierra District Office, 29688 Auberry Road.

Oakhurst: Oct 2, at the Oakhurst Community Center, Road 425B.

The Notice of Intent is expected to be published in the **Federal Register** on September 14, 2007. The comment period on the proposed action will extend 30 days from the date the Notice of Intent is published in the **Federal Register**.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 2007. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Sierra NF participate at that time.

The final EIS is scheduled to be completed in January 2008. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision. Substantive comments are defined as ''comments within the scope of the proposed action, specific to the proposed action, and have a direct relationship to the proposed action, and include supporting reasons for the responsible official to consider'' (36 CFR 215.2). Submission of substantive comments is a prerequisite for eligibility to appeal under the 36 CFR part 215 regulations.

Comments Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v.

NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21)

Dated: September 5, 2007.

Edward C. Cole,

Forest Supervisor.

[FR Doc. E7–17834 Filed 9–10–07; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number: 070404074–7460–02]

American Indian and Alaska Native Policy Statement

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of re-opening of a public comment period.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this notice to extend the comment period on the draft American Indian and Alaska Native (AIAN) policy statement. The Census Bureau published the original notice and request for comments in the **Federal Register** on Wednesday, May 23, 2007 (72 FR 28952). Please see the earlier notice for more information about the draft AIAN policy. The Census Bureau is currently conducting consultation meetings with federally-recognized tribal governments in preparation for the 2010 Census and would like to extend the comment period to allow those tribal leaders and the general public the opportunity to review and provide their input on the draft policy. The Census Bureau will accept all public comments received from May 23 to the closing date identified in this notice.

DATES: Written comments must be submitted on or before October 27, 2007.

ADDRESSES: Direct all written comments to Dee Alexander, Program Analyst, Decennial Management Division, Outreach and Promotions Branch, U.S. Census Bureau, Room 3H166, 4600 Silver Hill Road, Stop 7100, Washington, DC 20233–7100. Written comments may also be submitted via fax at (301) 763–8327, or e-mail to *dee.a.alexander@census.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed policy should be directed to Dee Alexander, Program Analyst, Decennial Management Division, Outreach and Promotions Branch, U.S. Census Bureau, Room 3H166, 4600 Silver Hill Road, Stop 7100, Washington, DC 20233–7100, telephone (301) 763–9335.

Dated: Sepember 5, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–17846 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 45–2007)

Foreign–Trade Zone 49 -- Newark, New Jersey, Area, Application for Subzone Status In Mocean Group, LLC (Swimwear/Beach Accessories), North Brunswick, New Jersey

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting special–purpose subzone status for the distribution facility of In Mocean Group, LLC (IMG), located in North Brunswick, New Jersey. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Foreign–Trade Zones Board (15 CFR part 400). It was formally filed on August 31, 2007.

The IMG facility (146,150 sq. ft., with possible expansion of an additional 100,000 sq. ft., on 22 acres; 100 employees) is located at 2400 Route U.S. 1 in North Brunswick. The facility is used for the receipt, storage, manipulation (repacking/sorting) and distribution of swimwear and beach accessories. The products are distributed throughout the U.S. and abroad.

FTZ procedures could exempt IMG from Customs duty payments on foreign products that are re–exported. Some 5 percent of the facility's shipments are exported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the facility and entered for U.S. consumption. IMG also plans to realize logistical benefits through the use of weekly entry procedures. The application indicates that zone savings would help improve the international competitiveness of the distribution facility.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 13, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period November 26, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce, Export Assistance Center, 20 West State Street, Trenton, NJ 08625; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Camille Evans at *Camille_Evans@rita.doc.gov*. or (202) 482–2350.

Dated: September 4, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17858 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–888

Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''the Department'') is conducting the an administrative review of the antidumping duty order on floor–standing, metal–top ironing tables and certain parts thereof from the People's Republic of China (''PRC''). The period of review (''POR'') is August 1, 2005, through July 31, 2006. We have preliminarily determined that Since Hardware (Guangzhou) Co., Ltd. (''Since Hardware''), the sole company subject to this review, has not made sales to the United States of the subject merchandise at prices below normal value. We invite interested parties to comment on these preliminary results. Parties filing comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument(s).

EFFECTIVE DATE: September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Anya Naschak or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6375 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published in the **Federal Register** the antidumping duty order regarding floor–standing, metal–top ironing tables and certain parts thereof (''ironing tables'') from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004) (*Amended Final FR*).

On August 1, 2006, the Department published a notice of opportunity to request an administrative review of the ironing tables antidumping duty order. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 71 FR 43441 (August 1, 2006). On August 2, 2006, and August 29, 2006, respectively, in accordance with 19 CFR 351.213(b)(2), Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (''Foshan Shunde'') and Since Hardware requested administrative reviews of their sales under the antidumping duty order on ironing tables from the PRC. On August 31, 2006, Home Products International Inc. (''Petitioner'') also requested an administrative review of Since Hardware's sales. On September 29, 2006, the Department initiated an administrative review of Since Hardware and Foshan Shunde. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

On December 21, 2006, Foshan Shunde filed a letter withdrawing its request for review. On January 23, 2007, the Department rescinded this administrative review with respect to Foshan Shunde. *See Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 2856 (January 23, 2007).

On April 17, 2007, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until August 31, 2007. *See Floor–Standing, Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the 2005/2006 Administrative Review*, 72 FR 19173 (April 17, 2007).

On April 19, 2007, Petitioner submitted comments regarding the selection of appropriate surrogate values for valuing the factors of production for these preliminary results. On April 26, 2007, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the other potential surrogate countries and to submit publicly available information to value the factors of production. On April 30, 2007, Since Hardware submitted comments regarding Petitioner's April 19, 2007, submission. On May 9, 2007, Petitioner submitted additional comments regarding surrogate values for the preliminary results. On July 2, 2007, Petitioner submitted comments on the Department's selection of a surrogate country.

On July 11, 2007, we extended the time limit for submitting publicly available surrogate values for consideration in these preliminary results. On July 20, 2007, Petitioner submitted additional comments on the appropriate surrogate values for valuing the factors of production for these preliminary results. In addition, on July 27, 2006, Petitioner submitted Indian audited financial statements for the 2005–2006 fiscal year. Since Hardware submitted rebuttal comments to Petitioner's July 20, 2007, comments on July 30, 2007.

The Department received timely filed original and supplemental questionnaire responses from Since Hardware.

Between July 31, 2007, and August 9, 2007, the Department received the following pre–preliminary results comments: Petitioner's July 31, 2007, submission (''Petitioner Pre–Prelim Comments''); Since Hardware's August 6, 2007, submission (''Since Hardware Pre–Prelim Comments''); and Petitioner's August 9, 2007, submission (''Petitioner Additional Prelim Comments'')

Scope of the Order

For purposes of this order, the product covered consists of floor–standing, metal–top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full–height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor–standing, metal–top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product

sold as a ready–to-use ensemble consisting of the metal–top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board'' – *i.e.*, a metal–top table only, without the pad and cover with or without additional features, e.g. iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor–standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (''CBP'') purposes, the Department's written description of the scope remains dispositive.

Non–Market-Economy Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–01 (February 14, 2003), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review, 68 FR 70488 (December 18, 2003). None of the parties to these reviews has contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''). In this review, Since Hardware submitted information in support of its claim for a company–specific rate.

Accordingly, we have considered whether Since Hardware is independent from government control, and therefore eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut–to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from *Sparklers*, 56 FR 20588 at Comment 1, further discussed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities. *See Sparklers*, 56 FR 20588 at Comment 1 and *Silicon Carbide*, 59 FR 22586–87.

Since Hardware provided complete separate–rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate–rates analysis to determine whether these exporters are independent from government control.

Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588 at Comment 1. As discussed below, our analysis shows that the evidence on the record supports a preliminary finding of an absence of *de jure* government control for the three fully responsive companies based on each of these factors.

Since Hardware has placed on the record a number of documents to demonstrate absence of *de jure* control, including documentation substantiating its claims that it is a wholly foreign–owned enterprise registered in China, the ''Foreign Trade Law of the People's Republic of China'' (May 12, 1994) (''*Foreign Trade Law*''), and ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (June 3, 1988) (''*Legal Corporations Regulations*''). *See* Since Hardware's Section A questionnaire response dated November 8, 2006 (''Since Hardware Section A'') at Exhibits A–2 and A–5. Since Hardware also submitted a copy of its business license, which was issued by the Guangzhou Municipal Industrial and Commercial Administration. *See* Since Hardware Section A at Exhibit A–4. Since Hardware explained that its business license ensures that Since Hardware maintains sufficient capital and operating capacity to engage in normal business operations and that only Since Hardware may use its business license. *See* Since Hardware Section A at 4. Since Hardware affirms that there are no limitations imposed on Since Hardware by this license. *See id.* The license may be revoked, according to Since Hardware, only if a situation arises where, consistent with Article 30 of the

Legal Corporations Regulations, Since Hardware engages in prohibited activities. See Since Hardware Section A at 4 and Exhibit A–5. Further, Since Hardware states that to obtain a renewal of its business license, it must submit balance sheets and profit and loss ('P&L'') statements to the issuing authority. *See id*.

Since Hardware has placed on the record the *Foreign Trade Law* and states that this law allows it full autonomy from the central authority in governing its business operations. *See* Since Hardware Section A at 3. We have reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states, ''foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law.'' As in prior cases, we have analyzed such PRC laws and found that they establish an absence of de jure control. *See*, *e.g.*, *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001), unchanged in *Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001). Therefore, we preliminarily determine that there is an absence of *de jure* control over the export activities of Since Hardware.

Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control, which would preclude the Department from assigning separate rates. *See id*.

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See id*.

Since Hardware has asserted the following: (1) it is a wholly foreign–owned company; (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to bind sales contracts; (4) the company's general manager appoints the company's management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its board of directors decides how profits will be used. See Since Hardware Section A at 4–8. We have examined the documentation provided and noted no discrepancies between the information on the record and Since Hardware's statements on the record with respect to *de facto* control over its export activities.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Since Hardware's export activities, we preliminarily determine that Since Hardware has met the criteria for the application of a separate rate.

Fair Value Comparisons

To determine whether the respondent's sales of the subject merchandise to the United States were made at prices below normal value, we compared its United States prices to normal values, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice. *See* section 773(a) of the Act.

U.S. Price

Export Price

We based U.S. price for Since Hardware on export price (''EP'') in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (''CEP'') was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight, foreign brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. Also, we added billing adjustments for origin receiving charges and freight revenue to the gross unit price, where applicable. We have preliminarily determined to accept these billing adjustments on the basis of the statements and documentation provided by Since Hardware indicating that these charges were separately listed on the sales invoice and paid for by the customer.

Where foreign inland freight or foreign brokerage and handling were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (*see* ''Factors of Production'' section below for further discussion).

Treatment of Sample Transactions

During the course of this review, Since Hardware reported that it provided a small number of samples to certain U.S. customers. *See* Since Hardware's 2nd Supplemental response dated July 30, 2007 (''2nd Supplemental'') at 2–4. In determining whether to include these transactions in Since Hardware's margin calculation, the Department analyzed whether Since Hardware received consideration for these samples, consistent with the Federal Circuit's decision that a sale requires ''both a transfer of ownership to an unrelated party and consideration. Consideration generally requires a bargained–for exchange.'' *See NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997) (''*NSK*''). In the instant case, the Department notes that these samples were provided by Since Hardware to unaffiliated parties in the United States, and that none of the samples reported by Since Hardware were provided for commercial value (*i.e.*, samples shipped during the POR were zero–price transactions). Further, we note that certain of the reported samples were the first shipment of the applicable product code made to that customer, and the remaining samples were made for no commercial consideration in a non–commercial quantity, and shipped in a manner inconsistent with the remainder of Since Hardware's sales during the POR. Consequently, for these preliminary results, we find that these reported samples were made for no commercial consideration and in non–commercial quantities to unaffiliated customers in a manner inconsistent with Since Hardware's other sales during the POR. Therefore, consistent with the Federal Circuit's determination in NSK (*see NSK* at 115 F.3d 965, 975), the Department preliminarily determines that Since Hardware's transactions involving its samples do not constitute sales. As a result, the Department is excluding these transactions from Since Hardware's margin calculation.

Normal Value

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production valued in a surrogate market economy country

or countries. Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production based on the prices or costs of the factors of production, in one or more market–economy countries that to the extent possible: (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development, as identified in the Memorandum from the Office of Policy to James C. Doyle, Director, AD/CVD Operations, Office 9, dated April 18, 2007. *See* Memorandum to the File from Anya Naschak, Senior International Trade Analyst, regarding Selection of a Surrogate Country in the Second Antidumping Duty Administrative Review of Floor–Standing, Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China, dated August 31, 2007 (''Surrogate Country Memorandum'') at Attachment I. In addition, based on information from the investigation of ironing tables, India is a significant producer of comparable merchandise. *See Notice of Initiation of Antidumping Investigation: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 68 FR 44040, 44042 (July 25, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 35296, 35297 (June 24, 2004).

Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate–country selection. See Surrogate Country Memorandum.

Market Economy Purchases

Certain of Since Hardware's inputs into the production of the subject merchandise were purchased from market economy (''ME'') suppliers and paid for in ME currencies. We used the weight–averaged ME prices paid by Since Hardware when the inputs were obtained from a ME supplier, paid for in a ME currency, were demonstrated to be consistent with ME prices, and were a significant portion of the total purchases of that input.

In the recently–completed final results of the first administrative review of this order (*see Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 13239 (March 21, 2007) (''*AR1 Final Results*''), and accompanying Issues and Decision Memorandum at Comment 6 (''AR1 Decision Memorandum''),[1] the Department determined that ''there is a potential, in situations where a supplier is physically located in a ME, but overwhelmingly owned by an entity(ies) located in an NME, that such a supplier may make pricing decisions based on NME rather than ME principles.'' *See* AR1 Decision Memo at Comment 6. In this case, Since Hardware has again purchased ME inputs from the same NME–owned entity as discussed in the *AR1 Final Results*.

Both Petitioner and Since Hardware have submitted comments regarding the treatment of Since Hardware's ME purchases and the analysis of these purchases in the context of the above facts. *See*, *e.g.*, Petitioner Pre–Prelim Comments, Since Hardware Pre–Prelim Comments, and Petitioner Additional Prelim Comments. Based on the information on the record of this administrative review with respect to the supplier of Since Hardware's ME inputs, the Department preliminarily finds that a similar analysis of Since Hardware's ME purchases is necessary to ensure that these purchases were made according to ME principles. However, as a full discussion of these issues is not possible here due to their business proprietary nature, we have fully addressed the basis for this preliminary decision in Since Hardware's analysis memo. *See* Memorandum to the File from Anya Naschak Senior International Trade Analyst and Bobby Wong, International Trade Analyst, regarding Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) Analysis Memorandum for the Preliminary Results of Review, dated August 31, 2007 (''Since Hardware Analysis Memo'').

Consistent with the methodology[2] utilized in the *AR1 Amended Final*, we have examined the average purchase price of each input purchased by Since Hardware from the NME–owned supplier, and compared the average purchase prices to weighted–average international market prices derived from annualized export statistics obtained from World Trade Atlas (''WTA'') for the country from which the input was originally produced. As discussed in detail in the Since Hardware Analysis Memo, the Department found that certain of Since Hardware's purchases of cold rolled steel, hot rolled steel, powder coating, and nails, were made at prices that were at or above the weighted–average international market price based on WTA export statistics. Because these prices are at or above the weighted–average international market price, the Department finds that Since Hardware's purchases of these inputs were made at prices reflective of ME principles, and have utilized Since Hardware's ME purchases for these inputs. See Since Hardware Analysis Memo for a detailed discussion of these prices. However, certain of Since Hardware's purchases of cold rolled steel, steel wire rod, cotton fabric, springs, bolts, and rivets from the same supplier show that these purchases were made at prices below the international market prices. Accordingly, the Department finds that record evidence demonstrates that purchases of these inputs may not be reflective of ME principles (*i.e.*, the prices were below the weighted–average international market price based on the WTA statistics). Thus, the Department has disregarded these purchases in calculating normal value. For those inputs for which no purchases were made consistent with ME principles, the Department has relied upon its factors of production methodology described below.

The Department recently changed its practice with respect to the use of ME inputs in NME proceedings (*see Antidumping Methodologies: Market Economy Inputs, Expected Non Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (''*ME Input Policy*''). The Department stated that this practice ''will take effect for all segments of NME proceedings that are initiated after publication of this notice in the **Federal Register**'' (*id.* at 71 FR 61719), which was October 19, 2006. Given that the instant administrative review was initiated on September 29, 2006, the Department's new ME input policy will not be applied to this case. Therefore, we have analyzed Since Hardware's inputs which were purchased consistent with ME principles pursuant to our previous practice, which entailed a case–by-case basis analysis of whether the volume of ME inputs was meaningful. *See e.g.*, *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative*

[1] While the calculation was revised in the *Notice of Amended Final Results of Antidumping Duty Administrative Review: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 72 FR 19689 (April 19, 2007) (''*AR1 Amended Final*''), the determination remained consistent with the *AR1 Final Results*.

[2] Where modifications were made to the details of this methodology, the Department has discussed these details in the Since Hardware Analysis Memo, due to their proprietary nature.

Review, 71 FR 71509 (December 11, 2006) and accompanying Issues and Decision Memorandum at Comment 1 (''*T&C Final*''); *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*: 72 FR 27287 (May 15, 2007) and accompanying Issues and Decision Memorandum at Comment 12 (''*Hand Trucks Final*'').

Section IV of the Department's standard Section D questionnaire requires respondents to report for each raw material the percentage purchased from a ME country and the percentage purchased from an NME. In its responses to the Department, Since Hardware reported the percentages of each raw material purchased from ME countries and paid for in a ME currency. For each of the inputs where Since Hardware's ME purchases were found to be reflective of ME principles, the Department found that the percentage purchased from market economy suppliers was meaningful. Due to the proprietary nature of Since Hardware's ME purchases and quantities, we are not able to discuss the details of these purchases here. For a complete discussion, see Since Hardware Analysis Memo. As a result, the Department found that Since Hardware's ME purchases of cold rolled steel, hot rolled steel, powder coating, and nails were a meaningful portion of total purchases of that input and, in accordance with section 351.408(c)(1) of the Department's regulations, have preliminarily valued these inputs using the actual ME prices paid.

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors of production reported by the producer for materials, energy, labor, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available values in the surrogate country, India.

Since Hardware reported by–product sales. With respect to the application of the by–product offset to normal value, consistent with the Department's determination in the investigation of diamond sawblades from the PRC, because the surrogate financial statements on the record of this administrative review contain no references to the treatment of by–products and because Since Hardware reported that it sold its by–products, we will deduct the surrogate value of the by–product from normal value. *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006). This is consistent with accounting principles based on a reasonable assumption that if a company sells a by–product, the by–product necessarily incurs expenses for overhead, SG&A, and profit. *See id.*

In selecting the surrogate Indian values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum (''Garlic Decision Memorandum'') at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data from the Ministry of Commerce of India (''Indian Import Statistics'') for August 2005 through July 2006 to value inputs sourced domestically by PRC suppliers, we added to the Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the closest seaport to the factory. This adjustment is in accordance with the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). When we used non–import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In addition, in instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non–industry-specific subsidies which may benefit all exporters to all export markets (*i.e.*, Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1. *See* Memorandum to the File: Factors of Production Valuation Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Floor–standing, Metal–top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated August 31, 2007 (''Factor Valuation Memo''), for a complete discussion of the import data that we excluded from our calculation of surrogate values.

Where we could not obtain publicly available information contemporaneous with the POR to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (''WPI'') as published in the *International Financial Statistics* of the International Monetary Fund, for those surrogate values in Indian rupees. We made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchanges rates posted on the Import Administration website (*http://www.trade.gov/ia/*). See Factor Valuation Memo.

We valued the factors of production as follows:

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Since Hardware used to produce the merchandise under review during the POR, except where noted below. For a detailed description of all surrogate values used in this administrative review, *see* Factor Valuation Memo.

To value water, we calculated the average rate of inside and outside industrial water rates from various regions as reported by the Maharashtra Industrial Development Corporation, *http://midcindia.org*, dated June 1, 2003. We inflated the value for water using the POR average WPI rate. See Factor Valuation Memo.

We valued electricity using the 2000 electricity price in India reported by the International Energy Agency statistics for *Energy Prices& Taxes, Second Quarter 2003*. We inflated the value for

electricity using the POR average WPI rate. *See* Factor Valuation Memo.

We valued diesel using the rates provided by the OECD's International Energy Agency's publication: Key World Energy Statistics from 2004 and 2005. The prices are based on 2004 and 2005 first quarter prices of automotive diesel fuel retail prices. *See* Factor Valuation Memo.

With respect to valuation of factory overhead, selling, general and administrative expenses, and profit, in the *AR1 Final Results* the Department relied on the 2004–2005 Infiniti Modules Pvt. Ltd. (''Infiniti Modules'') financial statements, because they represented the most specific, contemporaneous, and publicly available information. *See* AR1 Decision Memorandum at Comment 1. In the instant case, Petitioner placed on the record Infiniti Modules 2004–2005 and 2005–2006 financial statements and the 2004–2005 Agew Steel Manufacturers Private Limited (''Agew Steel'') financial statements in its April 19, 2007, submission at Exhibits 1–2, and argued that the Department should rely on the 2004–2005 Agew Steel financial statements, utilizing the 2005–2006 Infiniti Modules' profit ratio in lieu of Agew Steel's negative profit ratio to calculate factory overhead, selling, general, and administrative expenses, and profit. Since Hardware also argued the Department should rely on the Infiniti Modules 2004–2005 financial statements.

In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use ''the best available information'' from the appropriate market economy country. As discussed above, in choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. *See*, *e.g.*, Garlic Decision Memorandum at Comment 6. For these preliminary results, the Department has determined that the 2004–2005 Infiniti Modules financial statements are complete, publicly available, and reflect merchandise comparable to ironing tables. We note that the 2004–2005 Infiniti Modules financial statements were obtained from the Indian Registrar of Companies, and are publicly available. See Petitioner's July 27, 2007, surrogate value submission. With respect to quality, we note that the 2004–2005 Infiniti Modules financial statements are complete, audited financial statements with all auditors notes and schedules, as well a complete balance sheet and P&L. Regarding specificity, we preliminarily find, consistent with the AR1 Decision Memorandum at Comment 1, Infiniti Modules manufactures merchandise that closely reflects merchandise comparable to ironing tables. Therefore, we preliminarily find that the 2004–2005 Infinity Modules financial statements are publicly available, quality, data, and specific to the merchandise under review.

With respect to the Agew Steel and the 2005–2006 Infiniti Modules financial statements, the Department finds that these statements are less complete than the 2004–2005 Infiniti Modules statement. The Department notes that both the Agew Steel and 2005–2006 Infiniti Modules financial statements are missing the P&L. Irrespective of whether the same surrogate financial ratios may be derived from the schedules included in these statements, the function of an audit is to audit the balance sheet and P&L of a company, not the schedules. *See e.g.*, 2004–2005 Infiniti Modules financial statements, included in Petitioner's April 19, 2007, submission at Exhibit 2, which states ''we have audited the attached balance sheet of M/s. Infiniti Modules Pvt. Limited, as at 31st March 2005 and the P&L account for the year ended 31st March 2005.''[3] In this case, the Department has on the record a financial statement that includes all information upon which the auditors relied to evaluate the potential surrogate company's financial reports. As a result we preliminarily find, that the Agew Steel and 2005–2006 Infiniti Modules financial statements are less complete than those of the 2004–2005 Infiniti Modules financial statements. In addition, because these statements are less complete than the 2004–2005 Infiniti Modules financial statements, we find that the Agew Steel and 2005–2006 Infiniti Modules financial statements are less reliable than the 2004–2005 Infiniti Modules financial statements. The Department has evaluated the other potential sources for valuing surrogate financial ratios placed on the record of this proceeding. None of these other potential sources is as reliable or otherwise as appropriate for surrogate value purposes as the 2004–2005 Infiniti Modules financial statements. Thus, the Department preliminarily finds, consistent with the *AR1 Final Results*, that the 2004–2005 Infiniti Modules financial statements are the best information available on the record of this review, pursuant to section 773(c)(1) of the Act, from which to value the surrogate financial ratios of factory overhead, selling, general & administrative expenses, and profit. *See* Factor Valuation Memo for detail on the calculation of these ratios.

Because of the variability of wage rates in countries with similar levels of per capita gross domestic product, 19 CFR 351.408(c)(3) requires the use of a regression–based wage rate. Therefore, to value the labor input, we used the PRC's regression–based wage rate published by Import Administration on its website, *http://www.trade.gov/ia/*. *See* Factor Valuation Memo.

To value truck freight, we calculated a weighted–average freight cost based on publicly available data from *www.infreight.com*, an Indian inland freight logistics resource website. *See* Factor Valuation Memo.

To value brokerage and handling, the Department used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in the submission from Essar Steel Ltd. (''Essar Steel''), dated February 28, 2005, in the antidumping duty review of Certain Hot–Rolled Carbon Steel Flat Products from India; the submission from Agro Dutch Industries Limited (''Agro Dutch''), dated May 24, 2005, at Exhibit B–1, in the antidumping duty administrative review of Certain Preserved Mushrooms from India; and the submission from Kejriwal Paper Ltd. (''Kejriwal''), dated January 9, 2006, in the antidumping duty review of Lined Paper from India. While none of these sources are contemporaneous to the POR, these data represent the best information available. Further, the Department's preference is to average these data sources because they represent values for numerous transactions that are available for a range of products and minimize the potential distortions that might arise from a single price source. One value, taken in isolation, could differ significantly when compared across a range of products, values, and special circumstances of a single transaction. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision memo at Comment 5. *See also* Factor Valuation Memo.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available

[3] *See* also 2005-2006 Infiniti Modules financial statements, included in Petitioner's July 27, 2007, submission at Exhibit 1, auditors report at page 3; and Agew Steel financial statements, included in Petitioner's April 19, 2007, submission at Exhibit 1, page 8

information to value the factors of production until 20 days following the date of publication of these preliminary results.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Exporter	Margin (percent)
Since Hardware (Guangzhou) Co., Ltd.	0.31 % (*de minimis*)

For details on the calculation of the antidumping duty weighted–average margin for Since Hardware, *see* Since Hardware Analysis Memo. A public version of this memorandum is on file in the Department's central records unit (''CRU'').

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer–specific assessment rates for ironing tables from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 157.68 percent (*see Amended Final FR*); and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–17865 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results and Rescissions of the 2005–2006 Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 8, 2007, the Department published the preliminary results of the 2005–2006 administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China (PRC). *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results and Partial*

Rescission of the 2005–2006 Administrative Reviews, 72 FR 10492 (March 8, 2007) (*Preliminary Results*). This review covers four classes or kinds: (1) Axes/Adzes; (2) Bars/Wedges; (3) Hammers/Sledges; and (4) Picks/Mattocks. This review covers nine exporters or producer/exporters: (1) Iron Bull Industrial Co., Ltd. (Iron Bull); (2) Jafsam Metal Products (Jafsam); (3) Shanghai Machinery Import & Export Corp. (Shanghai Machinery); (4) Shanghai Xinike Trading Company (Xinike); (5) Shandong Huarong Machinery Co., Ltd. (Huarong); (6) Shandong Jinma Industrial Group Co., Ltd. (Jinma); (7) Shandong Machinery Import and Export Corporation (SMC); (8) Tianjin Machinery Import and Export Corporation (TMC); and (9) Truper Herramientas S.A. de C.V. (Truper). The period of review (POR) is February 1, 2005, through January 31, 2006. Based on our analysis of the record, including factual information obtained since the *Preliminary Results*, we have reversed the decision to rescind the administrative review of the antidumping duty order on the class or kind Axes/Adzes covering SMC and have applied adverse facts available (AFA). Therefore, the final results differ from the *Preliminary Results*. *See* ''Final Results of Review'' section below.

EFFECTIVE DATE: September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James at (202) 482–6312 or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Since the *Preliminary Results*, we received a case brief from respondent SMC on April 9, 2007. Separate rebuttal briefs were received from both petitioners, Ames True Temper (Ames) and Council Tool Company (Council Tools), on April 16, 2007. On April 24, 2007, the Department's Customs Liaison Unit forwarded certain U.S. Customs and Border Protection (CBP) documents to the team. These were placed on the record of this review on April 24, 2007. See the Memorandum to the File from Mark Flessner, Case Analyst, entitled ''Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China (A–570–803): U.S. Entry Documents and Opportunity to Comment'' (April 24, 2007). SMC, Ames, and Council Tools all filed comments concerning these documents on May 9, 2007. SMC requested and was granted time to file a rebuttal to Ames' and Council Tools' comments; SMC filed its rebuttal comments on May 16, 2007. On July 6, 2007, the Department published in the **Federal Register** an extension of the time limit for the final results until August 6, 2007. *See Notice of Extension of Time Limit for Final Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China*, 72 FR 36959 (July 6, 2007). On August 8, 2007, the Department published in the **Federal Register** a further extension of the time limit for the final results until September 4, 2007. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Notice of Extension of Time Limit for Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 44495 (August 8, 2007).

Scope of the Antidumping Duty Order

The products covered by these orders are heavy forged hand tools from the PRC, comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. Heavy forged hand tools include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. Heavy forged hand tools are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. Heavy forged hand tools are currently provided for under the following Harmonized Tariff System of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00 and 8201.40.60. Specifically excluded from these orders are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is as follows: (1) whether SMC demonstrated a lack of *de jure* and *de facto* government control to warrant receiving a separate rate; (2) whether the Department was correct in applying AFA to SMC's sales of Bars/Wedges and Hammers/Sledges; (3) whether the AFA rates applied to SMC's sales of Bars/Wedges, Hammers/Sledges, and Axes/Adzes were properly corroborated and reasonable; (4) whether the Department ought to reverse its preliminary rescission of the review for Axes/Adzes; (5) whether the Department ought to apply facts available for Axes/Adzes; and (6) whether the Department ought to apply AFA for Axes/Adzes. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the *Preliminary Results*

Based upon our analysis of the record (including factual information obtained since the *Preliminary Results*) and upon comments received from the interested parties, we are reversing our preliminary rescission of the administrative review covering the class or kind Axes/Adzes with respect to SMC. We are also basing our margin for SMC for Axes/Adzes on AFA. For a discussion of these changes, *see* the accompanying Issues and Decision Memorandum.

The PRC–wide Rate and Application of Facts Otherwise Available

The Department did not receive comments specifically pertaining to its *Preliminary Results* regarding the application of AFA to the PRC–wide entity for any of the four classes or kinds. (SMC did submit comments with regard to the rates it received as part of the PRC–wide entity for all classes or

kinds except Picks/Mattocks; for details and a full discussion, *see* the accompanying Issues and Decision Memorandum.) As a result, we have not altered our decision to apply total AFA to the PRC–wide entity for all four classes or kinds for these final results, in accordance with sections 776(a)(2)(A) and (B), as well as section 776(b), of the Tariff Act of 1930, as amended (the Tariff Act). *See* ''Final Results of Review'' section below.

As stated in the *Preliminary Results*, by failing to adequately respond to the Department's requests for information, SMC (with respect to Axes/Adzes, Bars/Wedges, and Hammers/Sledges), TMC (with respect to Picks/Mattocks), Huarong (with respect to Hammers/Sledges and Picks/Mattocks), and Jafsam (with respect to all four classes or kinds) have not demonstrated they are free of government control, and are therefore not eligible to receive a separate rate. *See*, *e.g.*, *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 11823 (March 13, 1997); *Final Determination of Sales at Less than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 48833 (September 20, 1993); and *Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China*, 58 FR 37908 (July 14, 1993). Consequently, consistent with the *Preliminary Results*, we continue to find that, because these companies did not qualify for separate rates, they are deemed to be part of the PRC–entity. *See Preliminary Results* at 10494.

As stated above, the PRC–wide entity did not respond to our requests for information. Because the PRC–wide entity did not respond to our request for information, we find it necessary, under sections 776(a)(2) and 776(b) of the Tariff Act, to use AFA as the basis for these final results of review for the PRC–wide entity.

In accordance with the Department's practice, we have assigned to the PRC–wide entity (including Jafsam and SMC) the rate of 189.37 percent as AFA for Axes/Adzes. This is the highest calculated rate of any segment in this proceeding, which was calculated in the 2004–2005 administrative review. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006) (*Final Results of 14th Review*). We have assigned to the PRC–wide entity (including Jafsam and SMC) the rate of 139.31 percent as AFA for Bars/Wedges. This rate is the highest dumping margin from any segment of this proceeding and was calculated during the 1998–1999 administrative review. *See* the accompanying Issues and Decision Memorandum at Comment 3; *see also Notice of Final Results and Partial Recission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China*, 65 FR 43290 (July 13, 2000); *Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews*, 65 FR 50499 (August 18, 2000). We have assigned to the PRC–wide entity (including Huarong, Jafsam, and SMC) the rate of 45.42 percent as AFA for Hammers/Sledges. This rate is the highest dumping margin from any segment of this proceeding and was applied as ''best information available'' (the predecessor to AFA) during the less–than-fair–value (LTFV) investigation for the sole respondent China National Machinery Import & Export Corporation, and was again corroborated and used as the PRC–wide and AFA rate in the 2004–2005 review. *See Final Results of 14th Review*. We have assigned to the PRC–wide entity (including TMC, Huarong, and Jafsam) the rate of 98.77 percent as AFA for Picks/Mattocks. This rate is the highest dumping margin from any segment of this proceeding; it was calculated in the fifth review, became the PRC–wide and AFA rate in the seventh review, and has been used since. *Id*. This is consistent with our practice in, *e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003); *see also Stainless Steel Plate in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 40914 (June 14, 2002). The U.S. Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice to assign AFA to non–cooperative respondents in several cases. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990); *see also Shanghai Taoen International Trading Co., Ltd. v. United States*, Slip Op. 05–22, at 16 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review); *NSK Ltd. v. United States*, 346 F.Supp.2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent).

Corroboration of Secondary Information Applied as AFA

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available. Secondary information has been interpreted as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc 103–316, Vol. 1, 103d Cong. (1994) (SAA) at 870. Under section 776(c) of the Act, the Department is granted a wide discretion in its selection of secondary information, *i.e.*, the AFA rate, as long as the Department can determine, to the extent practicable, that the AFA rate has probative value. *See generally* SAA at 870.

The term ''corroborate'' has been interpreted to mean that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins *per se* other than are administrative determinations. These rates are applied to the PRC–wide entity, *i.e.*, those companies not eligible for a separate rate with regard to the individual class or kind of merchandise. No information has been presented in the current review that calls into question the reliability of the information used for these AFA rates. Thus, the Department finds that the information is reliable. *See* the accompanying Issues and Decision Memorandum at Comment 3.

Reversal of Preliminary Rescission

Based upon CBP information received subsequent to the publication of the

Preliminary Results (*see* the Memorandum to the File from Mark Flessner, Case Analyst, entitled ''Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China (A–580–803): U.S. Entry Documents and Opportunity to Comment,'' dated April 24, 2007), we have determined that the review for Axes/Adzes with respect to SMC should not be rescinded. We based our margin for Axes/Adzes with respect to SMC on AFA because of SMC's failure to report sales and factor information for this class or kind, which prevented the Department from being able to calculate a margin. *See* the accompanying Issues and Decision Memorandum at Comments 4, 5, and 6.

Final Rescissions

In accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we finally rescind the following administrative reviews: (a) with respect to SMC for Picks/Mattocks; (b) with respect to Iron Bull for Axes/Adzes, Hammers/Sledges, and Picks/Mattocks; and (c) with respect to Xinike in all four classes or kinds. For rescission of these reviews with respect to Jinma (all four classes or kinds), Shanghai Machinery (all four classes or kinds), Truper (all four classes or kinds), TMC (Axes/Adzes, Hammers/Sledges, and Bars/Wedges), Huarong (Axes/Adzes and Bars/Wedges), and Iron Bull (Bars/Wedges), *see Administrative Review (02/01/2005 01/31/2006) of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Reviews*, 71 FR 53403 (September 11, 2006).

Final Results of Review

As a result of our reviews, we determine that the following antidumping margins exist for the period February 1, 2005, through January 31, 2006:

Manufacturer/exporter	Weighted–average margin (percent)
Heavy Forged Hand Tools from the PRC: Axes/Adzes.	
PRC–Wide Rate	189.37[1]
Heavy Forged Hand Tools from the PRC: Bars/Wedges.	
PRC–Wide Rate	139.31[2]
Heavy Forged Hand Tools from the PRC: Hammers/Sledges.	
PRC–Wide Rate	45.42[3]
Heavy Forged Hand Tools from the PRC: Picks/Mattocks.	
PRC–Wide Rate	98.77[4]

[1] The PRC-wide entity for Axes/Adzes includes SMC and Jafsam.
[2] The PRC-wide entity for Bars/Wedges includes SMC and Jafsam.
[3] The PRC-wide entity for Hammers/Sledges includes SMC, Jafsam, and Huarong.
[4] The PRC-wide entity for Picks/Mattocks includes Jafsam, TMC, and Huarong.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these final results for this administrative review for all shipments of heavy forged hand tools, finished or unfinished, with or without handles, from the PRC, entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(c) of the Tariff Act: (1) for SMC, Jafsam, Huarong, and TMC, the cash deposit rate will be the rates listed above under the ''Final Results of Review'' section for each class or kind and for each company as set forth in Footnotes 1–4; (2) for previously–reviewed PRC and non–PRC exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period; (3) for all other PRC exporters (including the exporters named as part of the PRC–wide entity above), the cash deposit rates will be the PRC–wide rates established in the final results of this review; and (4) for all other non–PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements shall remain in effect until further notice.

Assessment of Antidumping Duties

The Department will determine, and CBP will assess, antidumping duties on all appropriate entries. We will direct CBP to assess the resulting assessment rates against the CBP values for the subject merchandise on each of the exporter's entries during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate any entries without regard to antidumping duties for which the assessment rate is *de minimis*. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: September 4, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1: SMC and *de facto* and *de jure* government control

2: Use of adverse facts available (AFA) for Bars/Wedges and Hammers/Sledges

3: Corroboration of AFA rates for Bars/Wedges, Hammers/Sledges, and Axes/Adzes

4: Preliminary rescission of review for Axes/Adzes

5: Use of facts available if Preliminary rescission of review for Axes/Adzes is reversed

6: Use of adverse facts available if Preliminary rescission of review for Axes/Adzes is reversed

[FR Doc. E7–17857 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 7, 2007, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. *See Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 25740 (May 7, 2007) (*Preliminary Results*). The review covers two respondents, PSC VSMPO–AVISMA Corporation and its affiliated U.S. reseller VSMPO–Tirus, U.S. Inc. (collectively AVISMA), and Solikamsk Magnesium Works (SMW). The period of review (POR) is October 4, 2004, through March 31, 2006. We invited interested parties to submit comments on our *Preliminary Results*. Based on our analysis of the comments received, we have made changes to our calculations with regard to AVISMA. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (AVISMA and SMW), Gene Calvert (AVISMA), Jack Zhao (SMW); AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone numbers (202) 482–3148, (202) 482–3586, and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2007, the Department published the preliminary results of this review in the **Federal Register**. *See Preliminary Results*. Since the *Preliminary Results*, the following events have occurred. On June 6, 2007, U.S. Magnesium LLC (U.S. Magnesium), one of the petitioners in the original investigation, submitted a case brief regarding the cost calculation of certain by–products internally consumed by SMW. On June 6, 2007, AVISMA submitted a case brief commenting on the calculation of AVISMA's General and Administrative (G&A) expenses and a small number of sales of cylinders in the home market. On June 15, 2007, SMW filed a rebuttal brief regarding U.S. Magnesium's case brief and U.S. Magnesium submitted a rebuttal brief regarding AVISMA's case brief. All case and rebuttal briefs were timely filed.

Period of Review

This review covers the period October 4, 2004 through March 31, 2006.

Scope of the Order

The merchandise covered by this order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium–based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) products that contain at least 99.95 percent magnesium, by weight (generally referred to as ''ultra–pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy''.

The scope of this order excludes: (1) magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non–magnesium granular materials to make magnesium–based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[1]

The merchandise subject to this order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive.

On November 9, 2006, in response to U.S. Magnesium's request for scope rulings, the Department issued a final scope ruling in which we determined that the processing of pure magnesium ingots, imported from Russia by Timminco, a Canadian company, into pure magnesium extrusion billets constitutes substantial transformation. Therefore, such alloy magnesium extrusion billets produced and exported by Timminco are a product of Canada, and thus not included within the scope of the order. *See* November 9, 2006 Memorandum for Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Barbara E. Tillman, Director, Office 6, and Wendy Frankel, Director, Office 8, China/NME Group, AD/CVD Operations: *Pure Magnesium from the People's Republic of China (A–570–832), Magnesium Metal from the People's Republic of China (A–570–896), and Magnesium Metal from Russia (A–821–819): Final Ruling in the Scope Inquiry on Russian and Chinese Magnesium Processed in Canada*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are listed in the Appendix to

[1] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China, 66 FR 49345 (September 27, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 FR 49349 (September 27, 2001); Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not chemically combined in liquid form and cast into the same ingot.

this notice and addressed in the Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, *Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Magnesium Metal from the Russian Federation (Decision Memorandum)*, dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this review in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at: *http://www.trade.gov/ia.* The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculations used in the *Preliminary Results*. These adjustments are discussed in detail in the *Decision Memorandum*. For AVISMA, we adjusted AVISMA's general and administrative (''G&A'') expense rate. For SMW, we made no change in response to petitioner's argument for rejecting SMW's claim for an offset to the magnesium products' cost for the chlorine gas generated by the magnesium production unit. The specifics of respondent's and petitioner's arguments and the Department's response to them require the reference to business proprietary information. Therefore, the parties' arguments and our position are fully discussed in a separate business proprietary memorandum. See Memorandum from Christopher Zimpo to Neal Halper, *Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Solikamsk Magnesium Works*, dated concurrently with this notice.

Final Results of Review

We determine that the following weighted–average antidumping margins exist for the period October 4, 2004 through March 31, 2006:

Manufacturer/exporter	Weighted–Average Margin (percent)
PSC VSMPO–AVISMA Corporation	0.41 (de minimis)
Solikamsk Magnesium Works	3.77

Duty Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will issue importer–specific assessment instructions for entries of subject merchandise during the POR. The Department intends to issue assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, if there is no rate for the intermediate company(ies) involved in the transaction, we will instruct CBP to liquidate unreviewed entries at the all others rate of 21.01 percent established in the less than fair value (LTFV) investigation. *See Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005) (*Antidumping Duty Order*). See also Section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, consistent with section 751(a)(2)(C) of the Act: (1) for the companies covered by this review, the cash deposit rate will be zero for AVISMA and 3.77 percent for SMW; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be 21.01 percent, the ''All Others'' rate established in the LTFV investigation. *See Antidumping Duty Order*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. See 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 04, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Issues Covered in the Decision Memorandum

Part I AVISMA

Comment 1: Fiscal Year Versus POR G&A Expenses

Comment 2: Error in Reported G&A Expenses

Comment 3: Auxiliary Services in G&A Expenses

Comment 4: Impact of AVIMSA's Merger with VSMPO on G&A Expense Rate

Comment 5: Financial Expense Ratio

Comment 6: Certain Sales of Cylinders in the Home Market

Part II SMW

Comment 7: Chlorine Gas Offset

[FR Doc. E7–17859 Filed 9–10–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to requests filed by U.S. Steel Corporation (U.S. Steel) (the ''petitioner''), SeAH Steel Corporation (''SeAH''), Husteel Co, Ltd (''Husteel'') and Nexteel Co., Ltd (''Nexteel'') (collectively, the ''respondents''), the U.S. Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe (''OCTG''), from Korea. This review covers the following producers/exporters: SeAH, Husteel, and Nexteel. The period of review (''POR'') is August 1, 2005 through July 24, 2006.

We preliminarily find that Husteel made sales at less than normal value (''NV''), and Nexteel and SeAH did not sell subject merchandise at less than NV during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on Husteel's entries of merchandise during the POR, and to liquidate Nexteel's and SeAH's entries during the POR without regard to antidumping duties. The preliminary dumping margins are listed below in the section entitled ''Preliminary Results of Review.''

EFFECTIVE DATE: September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0780.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41058). On August 1, 2006, the Department published the notice of opportunity to request an administrative review of the antidumping order on OCTG from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 43441 (August 1, 2006). On August 31, 2006, the Department received a properly filed, timely request for an administrative review of Husteel and SeAH from petitioner and a request from SeAH, Husteel, and Nexteel for a review of their sales. On September 29, 2006, the Department published a notice of initiation for this antidumping duty administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

On October 26, 2006, the Department issued questionnaires[1] to Husteel, SeAH, and Nexteel. All three companies submitted Section A responses on December 14, 2006, and submitted their Section B–D responses on January 3, 2007. The Department issued supplemental questionnaires to Husteel, SeAH, and Nexteel on April 11, 2007. The Department received responses from Husteel and Nexteel on May 2. 2007, and from SeAH on May 8, 2007.

On May 7, 2007, the Department published a notice extending the deadline for the preliminary results of this administrative review from May 3, 2007 until no later than August 31, 2007. *See Oil Country Tubular Goods, Other than Drill Pipe, from Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 25745 (May 11, 2007).

Scope of the Order

The products covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under sub–headings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS sub–headings are provided for convenience and customs purposes. The written description remains dispositive of the scope of the order.

Analysis

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (''the Act''), we considered all products manufactured by SeAH and Nexteel that are covered by the description contained in the ''Scope of the Order'' section above and that were sold in the comparison market during the POR, to be the foreign like product for purposes of determining the appropriate product comparisons to U.S. sales. *See* ''Selection of Comparison Market'' section below. Where SeAH made no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's October 26, 2005 antidumping questionnaire. Nexteel's comparison market sales were identical to its U.S. sales of subject merchandise during the POR, so we did not need to match its U.S. sales to the most similar foreign like product..

Because neither Husteel's home market sales nor its third country sales pass the viability test, we are using constructed value (''CV'') as the basis for normal value (''NV'') for Husteel. *See*

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

''Selection of Comparison Market'' section, below.

Date of Sale

It is the Department's practice to use the invoice date as the date of sale. However, 19 CFR 351.401(i) states that the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087,1090–1093 (CIT 2001).

U.S. Sales: Husteel, SeAH, and Nexteel each reported that the material terms of their respective U.S. sales are subject to change until they issue the invoice to the unaffiliated U.S. customer. However, we note that, for both HuSteel and SeAH, shipment date always precedes the date that Husteel and SeAH issue their invoice to the U.S. unaffiliated customer. We also find that for some of Nexteel's U.S. sales, shipment dates precedes invoice date. Thus, to the extent that shipment occurs prior to invoice date, we are following our practice of using shipment date as date of sale. *See, e.g., Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February, 24, 2005), and accompanying *Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value Issues and Decisions Memorandum at Comment 14*. For Nexteel's sales where Nexteel issues the invoice prior to shipping the merchandise, we will use invoice date as the date of sale.

Comparison Market Sales: Since we are using CV for purposes of NV for HuSteel, the issue of appropriate date of sale in the comparison market is moot for HuSteel. For their respective sales to Canada, Nexteel and SeAH reported that the material terms of sale are subject to change until they issue the invoice to their respective unaffiliated Canadian customers. We find that Nexteel issued its invoices to its Canadian customers prior to shipment. As such we will us invoice date as date of sale for Nexteel's Canadian sales. However, the Department finds that SeAH's shipment date always precedes the date it issues its invoice to the unaffiliated Canadian customer. Thus, because SeAH's shipment occurs prior to invoice date, we are following our practice of using shipment date as date of sale. *See, e.g., Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February, 24, 2005), and accompanying Magnesium Metal from the Russian Federation: *Notice of Final Determination of Sales at Less Than Fair Value Issues and Decisions Memorandum at Comment 14*.

Normal Value Comparisons

To determine whether Husteel's, SeAH's, or Nexteel's sales of subject merchandise to the United States were made at less than NV, we compared each company's constructed export price (CEP), or export price (EP) to the NV, as described in the≥Constructed Export Price'' or ''Export Price'' and ''Normal Value'' sections of this notice, in accordance with section 777A(d)(2) of the Act.

Selection of Comparison Market

The Department determines the viability of a comparison market by comparing the aggregate quantity of comparison market sales to U.S. sales. A home market is not considered a viable comparison market if the aggregate quantity of sales of the foreign like product in that market amounts to less than five percent of the quantity of sales of subject merchandise to the United States during the POR. *See* section 773(a)(1)(C)(ii) of the Act; *see also* 19 CFR 351.404(b). Husteel, SeAH, and Nexteel each reported that the aggregate quantity of sales of the foreign like product in Korea during the POR amounted to less than five percent of the quantity of each company's sales of subject merchandise to the United States during the POR.

Husteel: In its January 3, 2007 questionnaire response, Husteel reported having no sales of OCTG to any other countries besides the United States during the POR. Since Husteel has no third country sales of foreign–like product during the POR, the Department is using CV for Husteel as the basis for NV for this review based on Husteel's cost of production (''COP''), in accordance with section 773(a)(4) of the Act.

SeAH: In its January 3, 2007 questionnaire response, SeAH reported no home market sales of OCTG during the POR. It reported sales of OCTG to Canada, Indonesia, and China during the POR. Since the quantity of foreign like product sold by SeAH to Canada was more than five percent and the quantities sold to Indonesia and China were less than five percent of the quantity of subject merchandise sold to the United States, the Department determined that only Canada qualified as a viable comparison market in accordance with section 773(a)(1) of the Act. Therefore, we are basing NV on sales to Canada except where there were no usable product matches. In those instances, in accordance with section 773(a)(4) of the Act, the Department used CV as the basis for NV.

Nexteel: In its January 9, 2007 questionnaire response, Nexteel reported sales of OCTG to Canada and the United States during the POR. Since the quantity of foreign like product sold by Nexteel to Canada was more than five percent of the quantity of subject merchandise sold to the United States, the Department determined that only Canada qualified as a viable comparison market based on the criterion established in section 773(a)(1) of the Act. Because these sales to Canada were identical to all U.S. sales we are basing NV on sales to Canada.

United States Price/Constructed Export Price and Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In Husteel's and SeAH's questionnaire responses, both companies classified their export sales of OCTG to the United States as CEP sales. In accordance with section 772(a) of the Act, EP is defined as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States . . . ,'' as adjusted under subsection (c). For purposes of this review, Nexteel classified all of its U.S. sales as EP sales.

Husteel: We preliminarily determine that all of Husteel's export sales of OCTG to the United States are properly classified as CEP sales because they were made for the account of Husteel by its affiliate in the U.S., Husteel USA. Husteel reported one channel of distribution in the U.S. market: ''produced to order'' sales, shipped directly from Korea to the unaffiliated U.S. customers.

The Department calculated Husteel's starting price as its gross unit price to its unaffiliated U.S. customers, taking into account, where necessary, billing adjustments and discounts, pursuant to section 772(c)(1) of the Act. The

Department made deductions from the starting price for movement expenses, including foreign inland freight, foreign and U.S. brokerage and handling, international freight, marine insurance and U.S. customs duties in accordance with section 772(c)(2) of the Act. *See Memorandum from Scott Lindsay, Case Analyst, to the File: Analysis of Husteel Co., Ltd. (''Husteel'') for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, dated August 31, 2007 (''*Husteel's Preliminary Analysis Memo*''), on file in the Central Records Unit (''CRU''), which can also be accessed directly on the Web at *http://ia.ita.doc.gov.* In accordance with section 772(d)(1) of the Act, the Department also deducted U.S. credit expenses, inventory carrying costs, and indirect selling expenses to derive Husteel's net U.S. price. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

SeAH: We preliminarily determine that all of SeAH's export sales of OCTG to the United States are properly classified as CEP sales because they were made for the account of SeAH by SeaAH's affiliate in the U.S., PPA. SeAH reported one channel of distribution in the U.S. market: merchandise was shipped by SeAH to PPA, then sold out of inventory by PPA to the unaffiliated customers. Many of SeAH's sales to the United States are further manufactured by an affiliated U.S. company.

The Department calculated SeAH's starting price as its gross unit price to its unaffiliated U.S. customers, taking into account, where necessary, billing adjustments and early payment discounts, pursuant to section 772(c)(1) of the Act. Where applicable, the Department made deductions from the starting price for movement expenses, including foreign inland freight, foreign and U.S. brokerage and handling, international freight, marine insurance and U.S. customs duties in accordance with section 772(c)(2) of the Act. *See Memorandum from Scott Lindsay, Case Analyst, to the File: Analysis of SeaH Steel Corporation (''SeAH'') for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, dated August 31, 2007 (''*SeAH's Preliminary Analysis Memo*''), on the record of this review and on file in the CRU. In accordance with section 772(d)(1) of the Act, the Department also deducted U.S. credit expenses, inventory carrying costs, and indirect selling expenses incurred in the United States. We also deducted the cost of further manufacturing, where applicable, in accordance with section 772(d)(2) of the Act. In addition, we deducted CEP profit in accordance with section 772(d)(3) of the Act.

Nexteel: Nexteel has reported that it sold subject merchandise to importers directly to unaffiliated customers in the U.S. and to unaffiliated resellers, and that it did not make any U.S. sales through an affiliated U.S. importer. Therefore, we preliminarily determine that Nexteel's transactions were EP sales.

We calculated EP in accordance with section 772(a) of the Act. We based EP on Nexteel's CNF price to its unaffiliated U.S. customers. We then made appropriate deductions for domestic inland freight from warehouse to port, domestic brokerage and handling, and international freight pursuant to section 772(c) of the Act. *See Memorandum from Scott Lindsay, Case Analyst, to the File: Analysis of Nexteel Co., Ltd. (''Nexteel'') for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, dated August 31, 2007 (''*Nexteel's Preliminary Analysis Memo*''), on the record of this review and on file in the CRU.

Normal Value

SeAH: Where appropriate, we made adjustments to NV in accordance with section 773(a)(6) of the Act. From the starting price, we deducted movement expenses, including foreign inland freight, third country brokerage, international freight, and marine insurance as well as direct selling expenses, such as credit expenses, and comparison market packing expenses. We made further adjustments for differences in costs attributable to differences in physical characteristics of merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also made a CEP offset in accordance with section 773(a)(7)(B) of the Act (*see* ''Level of Trade/CEP Offset'' section below).[2] Finally, the Department added U.S. packing expenses to calculate the foreign unit price in dollars (''FUPDOL'') to use as the NV.

Nexteel: Where appropriate, we made adjustments to NV in accordance with section 773(a)(6) of the Act. From the starting price, we deducted movement expenses, including inland freight from plant to port of export; international freight; and domestic brokerage and handling, direct selling expenses such as credit expenses and bank charges, as well as comparison market packing expenses. Finally, the Department added U.S. packing expenses to calculate the foreign unit price in dollars (''FUPDOL'') to use as the NV.

Cost Of Production Analysis

Because we are using CV for Husteel's NV, and there has been no cost allegation for Nexteel, we are only examining whether SeAH's sales to its comparison third country market are below the cost of production.

Pursuant to section 773(b)(1) of the Act, we examined whether SeAH's sales in the comparison market were made at prices below the COP. We compared sales of the foreign like product in the comparison market with model–specific COP figures in the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, and financial expenses and packing. In our sales–below-cost analysis, we used comparison market sales and COP information provided by SeAH in its questionnaire responses. *See* SeAH's January 3, 2007 section D Questionnaire Response.

We compared the weighted–average COPs to third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard third–country sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act.[3] On a product–specific basis, we compared the COP to third–country prices, less any movement charges, discounts and rebates, and direct and indirect selling expenses. *See Treatment of Adjustments and Selling Expenses in Calculating the Cost of Production and Constructed*

[2] The CEP offset is equal to the lesser of the total weighted average comparison market inventory carrying costs and indirect selling expenses or the sum of indirect selling expenses and inventory carrying costs for U.S. sales.

[3] Section 773(b)(2)(ii)(B-C) of the Act defines extended period of time as a period that is normally 1 year, but not less than 6 months, and substantial quantities as sales made at prices below the cost of production that have been made in substantial quantities if (i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or (ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

Value Import Policy Bulletin (March 25, 1994).

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than the COP, we did not disregard any below–cost sales of that model because the below–cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than the COP, we disregarded the below–cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. Because we compared prices to average costs in the POR, we also determined that the below–cost prices did not permit the recovery of costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

In certain instances, we found that more than 20 percent of SeAH's third country sales of a given model(s) during the POR were at prices below the COP, and, in addition, the below–cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We therefore excluded the below–cost sales and used the remaining sales, if any, or went to CV, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Constructed Value

Husteel: We used CV as the basis for NV for all sales because, as discussed above, Husteel had no viable comparison market in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We added the costs of materials, labor, and factory overhead to calculate the cost of manufacturing (''COM'') in accordance with section 773(e)(1) of the Act. We then added interest expenses; selling, general and administrative expenses (''SG&A''); profit; and U.S. packing expenses to COM to calculate the CV in accordance with sections 773(e)(2) and (3) of the Act. In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated profit and selling expenses based on SeAH's 2005 public financial statements. *See, e.g., Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 9924 (March 6, 2007).

SeAH: We used CV as the basis for NV for sales in which there were no usable contemporaneous sales of the foreign like product in the comparison market, in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We added reported materials, labor, and factory overhead costs to derive the COM, in accordance with 773(e)(1) of the Act. We then added interest expenses, SG&A, profit, and U.S. packing expenses to derive the CV, in accordance with sections 773(e)(2) and (3) of the Act. We calculated profit based on the total value of sales and total COP reported by SeAH in its questionnaire response, in accordance with section 773(e)(2)(A) of the Act. Finally, we deducted comparison market credit expenses from CV to calculate the FUPDOL, pursuant to section 773(e)(2)(b) of the Act.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales made in the comparison market at the same level of trade (''LOT'') as the CEP sales. The NV LOT is based on the starting price of the sales in the comparison market. In *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001) (''*Micron Technology*''), the Court of Appeals for the Federal Circuit held that the statute unambiguously requires Commerce to remove the selling activities set forth in section 772(d) of the Act from the CEP starting price prior to performing its LOT analysis. As such, for CEP sales, the U.S. LOT is based on the starting price of the sales, as adjusted under section 772(d) of the Act.

To determine whether NV sales are at a different LOT than the CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at different levels of trade, and the difference in levels of trade affects price comparability, as manifested in a pattern of consistent price differences, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (''*South African Plate Final*'').

Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the channel of distribution),[4] including selling functions,[5] class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for CEP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. Consistent with *Micron Technology*, 243 F.3d at 1315, the Department will adjust the U.S. LOT, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by 19 CFR 351.412.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the CEP sales, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In determining whether separate LOTs exist, we obtained information from SeAH regarding the marketing stages for the reported U.S. and comparison market sales, including a description of the selling activities performed for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

[4] The marketing process in the United States and in the comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale occurs.

[5] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common selling functions into four major categories: sales process and marketing support, technical service, freight and delivery, and inventory maintenance.

In the current review, SeAH reported one channel of distribution in the Canadian comparison market. All sales to the Canadian market were made between PPA and the unaffiliated customer and shipped directly to the customer from Korea. The selling functions performed by SeAH and PPA for the Canadian market were identical for each customer. As such, we preliminarily find that all of SeAH's sales in the Canadian market were made at one LOT.

SeAH reported one channel of distribution for its sales to the United States. We examined the selling functions performed by SeAH and PPA for the U.S. sales and found that all sales of the subject merchandise were inventoried and most were further manufactured by PPA in the United States before being sold to the unaffiliated customer. The selling functions performed by SeAH and PPA in the U.S. market were identical for each customer. Therefore, we preliminarily find that SeAH made its U.S. sales at one LOT. SeAH claimed that once adjustments for PPA's activities for U.S. sales are made, pursuant to section 772(d) of the Act, the LOT in the U.S. market is less advanced than the Canadian LOT.

To determine whether NV is at a different LOT than the U.S. transactions, the Department compared SeAH's selling activities for the Canadian market with those for the U.S. market. We grouped SeAH's selling activities for the Canadian market and U.S. market into the following categories: selling and marketing, technical service, freight, and inventory. *See* SeAH's Section A questionnaire response at Exhibit A–15. In accordance with *Micron Technology*, we removed the selling activities set forth in section 772(d) of the Act from the U.S. LOT prior to performing the LOT analysis. *See SeAH's Preliminary Analysis Memo*. After removing the appropriate selling activities, we compared the U.S. LOT to the Canadian LOT. Based on our analysis, we find that the U.S. sales are at a less advanced LOT than the Canadian sales. *See SeAH's Preliminary Analysis Memo*.

Therefore, because the sales in Canada are being made at a more advanced LOT than the sales to the United States, an LOT adjustment is appropriate for the Canadian sales in this review. However, as SeAH sold only through one channel of distribution to Canada, there is not sufficient data to evaluate whether an LOT adjustment is warranted. Therefore, we made a CEP offset in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). This offset is equal to the amount of indirect selling expenses and inventory carrying costs incurred in the comparison market up to but not exceeding the sum of indirect selling expenses and inventory carrying costs from the U.S. price in accordance with section 772(d)(1)(D) of the Act.

Level of Trade/EP Sales

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In this current review, Nexteel claims a single LOT in the comparison market and a single LOT in the U.S. market. In our original questionnaire, we asked Nexteel to provide a complete list of all the selling activities performed and services offered in the U.S. market and the comparison market for each claimed LOT. Pursuant to 19 CFR 351.412(c)(2), substantial differences in selling activities are a necessary condition for determining there is a difference in the stage of marketing. While Nexteel reported two U.S. distribution channels, we find that there are not significant differences in selling functions offered in the two U.S. distribution channels. As such, we find that a single LOT exists in the United States. *See Nexteel's Preliminary Analysis Memo*.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted average dumping margins exist:

Manufacturer/Exporter	Margin
SeAH Steel Corporation	0.30% (*de minimis*)
Husteel Co., Ltd	0.64%
Nexteel Co., Ltd.	0.00%

Cash Deposit Requirements

Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department revoked this order and notified U.S. Customs and Border Protection (CBP) to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after July 25, 2006, the effective date of revocation of this antidumping duty AD order. *See Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico; Revocation of Antidumping Duty Orders Pursuant to Second Five-year (Sunset) Reviews*, 72 FR 34442–34443 (June 22, 2007).

Duty Assessment

Upon publication of the final results of this review, the Department shall determine and CBP shall assess antidumping duties on all appropriate entries made prior to the effective date of the revocation, July 25, 2006. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. HuSteel and SeAH each made all their sales to the United States through an affiliated importer. HuSteel and SeAH have reported entered values for all of their respective sales of subject merchandise to the United States during the POR. We have compared the entered values reported by HuSteel and SeAH with the entered values that they reported to CBP on their customs entries and preliminarily find that HuSteel's and SeAH's reported entered values are reliable. *See Husteel's Preliminary Analysis Memo* and *SeAH's Preliminary Analysis Memo*. Therefore, for Husteel, in accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. For SeAH, if the preliminary results remain unchanged in the final results, we will instruct CBP to liquidate SeAH's entries of subject merchandise during the POR without regard to antidumping duties.

Nexteel did not act as importer of record on its sales to the United States and thus did not report the entered value for any of their respective sales of subject merchandise to the United States during the POR. Therefore, for Nexteel we have calculated an entered value. In accordance with 19 CFR 351.106(c)(s), if the preliminary results remain unchanged in the final results,

we will instruct CBP to liquidate Nexteel's entries of subject merchandise during the POR without regard to antidumping duties. *See Nexteel's Preliminary Analysis Memo*. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See* the *Assessment Policy Notice* for a full discussion of this clarification.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: 1) a statement of the issues; 2) a brief summary of the argument; and 3) a table of authorities. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case brief, rebuttal brief, or hearing no later than 120 days after publication of these preliminary results, unless extended. *See* 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: August 31, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–17850 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Orange Juice from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Fischer S/A—Agroindustria (Fischer Agroindustria) has requested a changed circumstances review of the antidumping duty order on certain orange juice from Brazil pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b). The Department of Commerce (the Department) is initiating this changed circumstances review and issuing this notice of preliminary results pursuant to 19 CFR 351.221(c)(3)(ii). We have preliminarily determined that Fischer S.A. Comercio, Industria and Agricultura (Fischer Comercio) is the successor–in-interest to Fischer Agroindustria.

EFFECTIVE DATE: September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil.

On May 21, 2007, Fischer Agroindustria requested an expedited changed circumstances review to determine that Fischer Comercio is the successor–in-interest to Fischer Agroindustria and, therefore, that Fischer Comercio is subject to the antidumping duty order on certain orange juice from Brazil.

On May 29, 2007, we requested additional information from Fischer Agroindustria regarding the factors the Department examines when conducting a changed circumstances review. On June 27, 2007, Fischer Agroindustria submitted this requested information, indicating that assets of Fischer Agroindustria were spun off and merged with Fischer Comercio. On August 2, 2007, we requested additional supporting documentation from Fischer Agroindustria to substantiate its assertions that the management, suppliers, and customers of the company had not changed as a result of the merger. On August 9 and 13, 2007, Fischer submitted this requested information. According to Fischer Agroindustria, it is necessary for the Department to determine that Fischer Comercio is the successor–in-interest to Fischer Agroindustria so that Fischer Comercio's entries of subject merchandise continue to receive Fischer Agroindustria's antidumping duty rate from U.S. Customs and Border Protection (CBP).

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as FCOJM; and (2) pasteurized single–strength orange juice which has not been concentrated, referred to as NFC. At the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were

excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada (Cargill), Coinbra–Frutesp S.A. (Coinbra–Frutesp), Sucocitrico Cutrale, S.A. (Cutrale), Fischer Agroindustria, and Montecitrus Trading S.A. (Montecitrus).

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42[deg] Brix, in a frozen state, packed in retail–sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product. The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of this order is dispositive.

Initiation and Preliminary Results

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the ''Background'' section, we have received information indicating that assets of Fischer Agroindustria were spun off and merged with Fischer Comercio. This constitutes changed circumstances warranting a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Fischer Agroindustria's submissions.

Section 351.221(c)(3)(ii) of the Department's regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have on the record the information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor–in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (Mar. 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (Feb. 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In its May 21, 2007, submission, Fischer Agroindustria states that the operational functions of Fischer Agroindustria were collapsed into Fischer Comercio. According to Fischer Agroindustria's June 27, 2007, submission, the company's management, production facilities and customer/supplier relationships have not changed as a result of the merger. To support its claims, Fischer Agroindustria submitted the following documents: (1) organizational charts from before and after the date of the merger; (2) minutes from the special meeting of shareholders for Fischer Agroindustria held December 31, 2006; (3) minutes from the special meeting of shareholders for Fischer Comercio held December 31, 2006; (4) the ''Protocol for Justification of Spin–Off Followed by Merger'' (the Protocol); (5) the list of shareholders of Fischer Comercio before and after the merger, as filed with the Register of Commerce in Brazil; (6) approval from the Register of Commerce of the minutes of the December 31, 2006, special meetings of Fischer Agroindustria and Fischer Comercio and of the Protocol; (7) a list of the managers of Fischer Agroindustria before the merger and Fischer Comercio after the merger; (8) a list of the suppliers of Fischer Agroindustria before the merger and Fischer Comercio after the merger; and (9) a list of the customers of Fischer Agroindustria before the merger and Fischer Comercio after the merger.

Based on the information submitted by Fischer Agroindustria, we preliminarily find that Fischer Comercio is the successor–in-interest to Fischer Agroindustria. Based on the evidence reviewed, we find that Fischer Comercio operates as the same business entity as Fischer Agroindustria and that the production facilities, supplier relationships, and customers have not changed as a result of the merger. Further, the companies' senior management is largely the same. Thus, we preliminarily find that Fischer Comercio should receive the same antidumping duty cash–deposit rate (*i.e.*, 12.46 percent) with respect to the subject merchandise as Fischer Agroindustria, its predecessor company.

However, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive. If Fischer Comercio believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate and receive a refund of any excess deposits. *See Certain Hot–Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed–Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880 (Nov. 30, 1999). As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct CBP to suspend shipments of subject merchandise made by Fischer Comercio at Fischer Agroindustria's cash deposit rate (*i.e.*, 12.46 percent).

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). A hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written

comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: September 5, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–17873 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin from the People's Republic of China: Final Results of the 2005–2006 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 4, 2007, the Department of Commerce (''Department'') published *Saccharin from the People's Republic of China: Preliminary Results of the 2005 2006 Antidumping Duty Administrative Review*, 72 FR 25247 (May 4, 2007) (''*Preliminary Results*''). The period of review (''POR'') is July 1, 2005, through June 30, 2006. The administrative review covers one respondent, Shanghai Fortune Chemical Co., Ltd. (''Shanghai Fortune'').

We invited interested parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we made certain changes to our calculations. The final dumping margin for the administrative review is listed in the ''Final Results of the Review'' section, below.

EFFECTIVE DATE: September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2007, the Department published the *Preliminary Results* of the 2005–2006 administrative review of the antidumping duty order on saccharin from the People's Republic of China (''PRC''). Since the publication of the *Preliminary Results*, the following events have occurred.

On May 24, 2007, the Department received a submission on surrogate value data from Shanghai Fortune.[1] In the *Preliminary Results*, we stated that any interested party may request a hearing and may submit briefs or written comments within 30 days of publication of the *Preliminary Results* notice in the **Federal Register**, and may submit rebuttal briefs, limited to the issues raised in the case briefs, five days subsequent to the due date of the case briefs. See *Preliminary Results*, 72 FR at 25252. On June 4, 2007, the Department received a case brief from Shanghai Fortune.[2] However, we did not receive any hearing requests or rebuttal briefs on the *Preliminary Results*.

We conducted this review in accordance with sections 751 and 777(i)(1) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213 and 351.221.

Period of Review

The POR is July 1, 2005, through June 30, 2006.

Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non–nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service (''CAS'') Registry 128–44–4); (2) calcium saccharin (CAS Registry 6485–34–34); (3) acid (or insoluble) saccharin (CAS Registry 81–07–07); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray–dried powder, and liquid forms. The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'') and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in the case brief filed by Shanghai Fortune in this review are addressed in the Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2005–2006 Administrative Review of Saccharin From the People's Republic of China,'' dated concurrently with this notice (''*Issues and Decision Memo*''), which is hereby adopted by this notice. A list of the issues raised by Shanghai Fortune and to which we have responded in the *Issues and Decision Memo* follows as an appendix to this notice. The *Issues and Decision Memo* is a public document which is on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building, and is also accessible on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the *Issues and Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received from Shanghai Fortune and information on the record of this review, we made changes to the margin calculations as noted below.

For the final results, we have made changes to the surrogate values for aqueous ammonia and steam coal. For further details, *see* the *Issue and Decision Memo* at Comments 1 and 3, the *Shanghai Fortune Analysis Memo*[3] and the *Final Surrogate Value Memo*.[4]

[1] *See* Letter from Shanghai Fortune regarding, ''Saccharin from the People's Republic of China: Submission of Publicly Available Data For Use As Surrogate Values,'' dated May 24, 2007.

[2] *See* Letter from Shanghai Fortune regarding, ''Saccharin from the People's Republic of China: Case Brief of Shanghai Fortune Chemical Company, Ltd.,'' dated June 4, 2007.

[3] *See* Memorandum to the file through Blanche Ziv, Program Manager, NME Group/Office 8, Import Administration, from Ann Fornaro, International Trade Analyst, NME Group/Office 8, Import Administration, regarding, ''Analysis for the Final Results of the 2005–2006 Administrative Review of the Antidumping Duty Order on Saccharin from the People's Republic of China: Shanghai Fortune Chemical Co., Ltd.,'' dated concurrently with this notice (''*Shanghai Fortune Analysis Memo*'').

[4] *See* Memorandum to the file through Blanche Ziv, Program Manager, AD/CVD Operations, Office

Final Results of the Review

We determine that the final weighted–average dumping margin for Shanghai Fortune for the period July 1 2005, through June 30, 2006, is zero percent. The Department will disclose calculations performed for the final results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after publication of the final results of the review. In accordance with 19 CFR 351.212(b)(1), for Shanghai Fortune, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. We calculated a per–unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer's ad valorem rate or a customer–specific per–unit rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash–Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Shanghai Fortune, which has a separate rate, is zero percent; (2) the cash deposit rate for previously investigated or reviewed PRC and non–PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 329.33 percent; and (4) the cash deposit rate for all non–PRC exporters of subject merchandise which have not received their own rate, will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of final results of the administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 4, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Issues and Decisions Memorandum

Comment 1 Valuation of Aqueous Ammonia
Comment 2 Valuation of Sulfur Dioxide
Comment 3 Valuation of Steam Coal

[FR Doc. E7–17851 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–S

8, from Frances Veith, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding, ''2005–2006 Antidumping Duty Order Administrative Review of Saccharin from the People's Republic of China: Surrogate Values for the Final Results,'' dated concurrently with this notice (''*Final Surrogate Value Memo*'').

DEPARTMENT OF COMMERCE

International Trade Administration

University of Southern California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

Docket Number: 07–047. *Applicant:* University of Southern California, Los Angeles, CA. *Instrument:* Electron Microscope, Model JEM–1400. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 72 FR 46037, August 16, 2007.

Docket Number: 07–050. *Applicant:* University of Massachusetts Medical School, Worcester, MA. *Instrument:* Electron Microscope, Model Quanta 200 FEG. *Manufacturer:* FEI, Company, Czech Republic. *Intended Use:* See notice at 72 FR 46037, August 16, 2007.

Docket Number: 07–049. *Applicant:* Indiana University. *Instrument:* Electron Microscope, Model JEM–3200FS. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 72 FR 46037, August 16, 2007.

Docket Number: 06–042. *Applicant:* The University of Illinois at Urbana-Champaign, Champaign, IL. *Instrument:* Electron Microscope, Model JEM–2200FS. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 72 FR 46037, August 16, 2007.

Docket Number: 07–052. *Applicant:* Scripps Research Institute, La Jolla, CA. *Instrument:* Electron Microscope, (2), Tecnai G2 Spirit TWIN and Morgagni TEM. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 72 FR 46037, August 16, 2007.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–17867 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 07–051. *Applicant:* Colorado College, Department of Physics, Colorado Springs, CO. *Instrument:* Low Temperature Ulta-High Vacuum Scanning Tunneling Microscope. *Manufacturer:* Omicron Nanotechnology GmbH, Germany. *Intended Use:* See notice at 72 CFR 46037, August 16, 2007. *Reasons: The instrument provides:* (a) A scanning tunneling microscope mounted inside a 4 K liquid helium reservoir (with a 22-hour liquid helium refill time); (b) Operation at an equilibrium temperature of 4 K (with in-situ sample preparation and tip transfer capability); (c) Low drift rates of 1 angstrom/hour; (d) RMS vibration amplitudes of <0.005 angstrom in a 300 Hz bandwidth; and (e) Sample registry after deposition. There are no domestically manufactured low temperature ultra-high vacuum scanning tunneling microscopes.

Docket Number: 07–053. *Applicant:* University of Kentucky, Dept. Civil Engineering, Lexington, KY. *Instrument:* Soil Stiffness Testing System. *Manufacturer:* GDS Instruments, Ltd., UK. *Intended Use:* See notice at 72 CFR 46037, August, 16, 2007. *Reasons:* The instrument provides a vertically propagating S-wave transmitter and a P-wave receiver along with a vertically propagating P-wave transmitter and S-wave receiver and a master signal conditioning unit along with GDSBES software to control data acquisition and drive signal generation for S and P wave velocity tests as well as a Hall effect local strain set (2 axial, 1 radial) and mid-plane pore pressure kit. No domestic sources making similar devices provide an integrated system of this type of testing with the resolution required for advanced geotechnical research.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–17868 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 19, 2007. The Judges Panel is composed of twelve members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce. The purpose of this meeting is to review applicant consensus scores and select applicants for site visit review. The applications under review by Judges contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 19, 2007 at 8:15 a.m. and adjourn at 4:30 p.m. on September 19, 2007. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 27, 2005, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: August 30, 2007.

James M. Turner,

Deputy Director.

[FR Doc. E7–17863 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC44

Endangered Species; File No. 1557–03

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that Molly Lutcavage has been issued a modification to scientific research Permit No. 1557.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On May 3, 2007, notice was published in the **Federal Register** (72 FR 24565) that a modification of Permit No. 1557 had been requested by the above-named individual. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The researchers will attach satellite-linked data recorders to the leatherback sea turtle's carapace and feed stomach temperature pills to the animals. These pills will record stomach temperatures

and transmit them to the satellite-linked data recorder for transmission to the researchers. Researchers will also attach diary tags using suction cups. This research will help better understand where, when, and under what environmental conditions leatherback sea turtles forage so as to better predict their movements. This information will be used to help predict leatherback movements and potential interactions with fisheries and other human activities to allow resource managers to design management strategies to protect this species.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 5, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–17899 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC41

Endangered Species; File No. 10037

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Dr. Douglas Peterson, Warnell School of Forest Resources (Fisheries Division), University of Georgia, Athens, GA 30602, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research on the Ogeechee River, GA.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 11, 2007.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10037.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq*.) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Dr. Peterson seeks permission to conduct research on shortnose sturgeon for five years to assess the abundance, age structure, distribution, movement, and critical habitat and will also investigate the adverse effects of estrogenic compounds. Researchers propose to capture 300 shortnose sturgeon yearly using gill and trammel nets and to anesthetize, measure, weigh, tissue and fin-ray sample, and scan for PIT tags. A subset of 10 sturgeon annually (40 during permit) would be laparoscoped and implanted with internal radio tags; a subset of 5 sturgeon annually (20 during permit), would be laparoscoped and fitted with external radio tags; and a subset of 12 sturgeon would be health evaluated using laparoscopy and venipuncture annually. Up to 40 shortnose sturgeon eggs would be collected annually using buffer pads to document spawning. The unintentional mortality of 2 shortnose sturgeon annually is also requested.

Dated: September 5, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–17900 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC42

Marine Mammals; File No. 10040

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Gary Matson, Matson's Laboratory, LLC, PO Box 308, 8140 Flagler Road, Milltown, MT 59851, has applied in due form for a permit to receive, import and export specimens for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 11, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10040.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant is requesting authorization for the receipt, import and export of teeth and prepared microscope slides obtained from seal and sea lion species, expect walrus (Order Pinnipedia). The Matson Laboratory provides age related data to researchers and biologists. Age data are used in population modeling, with age structure an indicator of population condition. Teeth are sent to the laboratory for cementum age analysis. The number of teeth varies depending upon the nature of the project, from a single tooth to several hundred from a legal harvest; no more than 2000 teeth will be analyzed annually. Import and export authority is requested for all locations wherever pinnipeds occur and are the subject of government-authorized research and/or harvest. Principally, these locations are expected to be those within the jurisdiction of the Government of Canada. There will be no incidental takes of non-target species. A permit is requested for five years.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 6, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–17895 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC25

Pacific Fishery Management Council; Public Meeting/Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: A Groundfish Stock Assessment Review (STAR) Panel will hold a work session which is open to the public. The STAR Panel will review new assessments for the southern portion of the black rockfish stock and blue rockfish off California, as well as rebuilding analyses for seven overfished West Coast rockfish species.

DATES: The STAR Panel meeting will begin at 12:30 p.m. on October 1, 2007 and will continue through October 5, 2007. The meeting will start at 8:30 a.m. each day (except October 1, when the panel convenes at 12:30 p.m.) and end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The STAR Panel meeting will be held at the NOAA Western Regional Center's Sand Point Facility, Building 4, Jim Traynor Seminar Room, 7600 Sand Point Way N.E., Seattle, WA 98115–6349.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: (206) 437–5670; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the STAR Panel meeting is to review draft stock assessments for the southern portion of the black rockfish stock in waters off California and Oregon, the blue rockfish stock in waters off California, and draft rebuilding analyses for bocaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish; work with the Stock Assessment Teams and rebuilding analysis authors to make necessary revisions; and produce STAR Panel reports for use by the Council family and other interested persons. No management actions will be decided by this STAR Panel. The STAR Panel's role will be development of recommendations and reports for consideration by the Council at its November meeting in San Diego, CA.

Although non-emergency issues not contained in the meeting agenda may come before the STAR Panel participants for discussion, those issues may not be the subject of formal STAR Panel action during these meetings. STAR Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STAR Panel participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 6, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–17839 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XB99

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting; Addendum

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Addendum to Earlier Notice - A Meeting of the South Atlantic Fishery Management Council; Agenda modification.

SUMMARY: The South Atlantic Fishery Management Council has modified its meeting agenda for its September 17–21, 2007 meeting to be held in N. Myrtle Beach, SC.

DATES: The meeting will take place September 17–23, 2007.

ADDRESSES: The meeting will be held at the Avista Resort, 300 N. Ocean Blvd, N. Myrtle Beach, SC 29582; telephone: (800) 968–8986 or (843) 249–2521.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management

Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The original notice published on August 14, 2007 (72 FR 45419).

The legal briefing on litigation (Closed Session) originally scheduled during the Council meeting on September 21, 2007 at 8 a.m. has been moved to September 18, 2007 at 1:30 p.m. as part of the Snapper Grouper Committee meeting. Because of this move, the Snapper Grouper Committee report to the Council originally scheduled for 8:15 a.m. on September 21, 2007 will begin instead at 8 a.m. on September 21, 2007.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: September 6, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–17833 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC39

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 4.3: ''The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity''

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce a 45-day public comment period for the draft report titled, U.S. Climate Change Science Program Synthesis and Assessment Product 4.3: ''The effects of climate change on agriculture, land resources, water resources, and biodiversity.''

This draft document is being released solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by NOAA. It does not represent and should not be construed to represent any Agency policy or determination. After consideration of comments received on the draft report, a revised version along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by October 26, 2007.

ADDRESSES: The draft Synthesis and Assessment Product 4.3: ''The effects of climate change on agriculture, land resources, water resources, and biodiversity'' is posted on the CCSP Web site at: *www.climatescience.gov/Library/sap/sap4–3/public-review-draft/default.htm*

Detailed instructions for making comments on the draft Report are provided on the SAP 4.3 webpage (see link here). Comments should be prepared and submitted in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that promote climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues.

Dated: September 5, 2007.

Thomas L. Laughlin,

Deputy Director, Office of International Affairs.

[FR Doc. E7–17893 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–12–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR Agreement); Correction

September 5, 2007.

In the notice published in the Federal Register on August 20, 2007 (72 FR 46445), CITA provided specifications for the subject woven fabrics. On page 46446, first column, in the table providing specifications for the 75% cotton, 25% nylon woven fabric, classified under the HTS number 5211.31.0020, under ''Filling Yarn Size,'' please change the specifications from ''35.5/1 metric (slub yarn of cotton wrapped around a 45 metric filament nylon)'' to ''35.5/1 metric (slub yarn of cotton alternating with a 45 metric filament nylon).''

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–17894 Filed 9–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Open Meeting of the Secretary of the Navy's Advisory Subcommittee on Naval History

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee will meet to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History, which was conducted on September 27 and September 28, 2007 and to make comments and recommendations on these activities to the Secretary of the Navy. The meetings will be open to the public.

DATES: The meetings will be held on Thursday, September 27, 2007, from 8 a.m. to 4 p.m. and Friday, September 28, 2007, from 8 a.m. to 4 p.m.

ADDRESSES: The meetings will be held at the Navy Museum of the Naval Historical Center, 805 Kidder Breese Street, SE., Building 70, Washington Navy Yard, DC 20374–5060.

FOR FURTHER INFORMATION CONTACT: Rear Admiral Paul E. Tobin, USN (Ret.), Director of Naval History, 805 Kidder Breese Street, SE., Bldg. 57, Washington Navy Yard, DC 20374–5060, telephone: 202–433–2210.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of these meetings is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History and to make comments and recommendations on these activities to the Secretary of the Navy.

Dated: September 5, 2007.

T.M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–17841 Filed 9–10–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

This notice invites written comments on the interim report and request for an expansion of scope of recognition submitted by The Association for Biblical Higher Education that will be reviewed at the Advisory Committee meeting to be held on December 17–19, 2007. The agency was not included in the list of accrediting agencies to be reviewed in the original notice inviting written comments published in the **Federal Register** on August 1, 2007.

Interim Report/Request for an Expansion of Scope of Recognition

1. The Association for Biblical Higher Education, Commission on Accreditation (Current scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of Bible colleges and institutes in the United States offering undergraduate programs.) (Requested scope of recognition: The accreditation and preaccreditation of institutions of biblical higher education in the United States offering undergraduate programs through both campus-based instruction and distance education.)

Where Should I Submit My Comments?

Please submit your written comments by mail, fax, or e-mail no later than September 28, 2007 to Ms. Robin Greathouse, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, Room 7126, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7011, fax: (202) 219–7005, or e-mail: *Robin.Greathouse@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity to Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, another **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer an opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of The Association for Biblical Higher Education's compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR Part 602 (for accrediting agencies). We will also respond to your comments, as appropriate, in the staff analysis we present to the Advisory Committee at its December 2007 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by September 28, 2007. In all instances, your comments regarding The Association for Biblical Higher Education must relate to the Criteria for the Recognition cited in the Secretary's letter that requested the interim report. You may obtain a copy of the Secretary's letter by calling (202) 219–7011.

What Happens to Comments Received After the Deadline?

We will treat any negative comments received after the deadline as complaints. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate. We will also notify the commentors of the disposition of those comments.

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting will be available for public inspection at the U.S. Department of Education, Room 7126, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone (202) 219–7011 between the hours of 8 a.m. and 3 p.m., Monday through Friday, until November 19, 2007. They will be available again after the December 17–19, 2007 Advisory Committee meeting. An appointment must be made in advance of such inspection.

Authority: 5 U.S.C. Appendix 2.

Dated: September 5, 2007.

Diane Auer Jones,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. E7–17824 Filed 9–10–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for 3 years, an information collection request (ICR) with the Office of Management and Budget (OMB) concerning the Occupational Radiation Protection program, OMB Control Number 1910–5105.

The Office of Worker Safety and Health Policy ensures that adequate policies are in place for the protection of workers at DOE sites and operations. The Office of Worker Safety and Health Policy uses the information collected from the contractors to evaluate the adequacy of DOE policies for the protection of workers from exposure to ionizing radiation.

Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this Notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

DATES: Comments regarding this proposed information collection must be received on or before November 13, 2007. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to: Dr. Judith D. Foulke, Office of Worker Safety and Health Policy (HS–11), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or by fax at (301) 903–7773 or by e-mail at *judy.foulke@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the person listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This ICR contains: (1) *OMB No:* 1910–5105; (2) *Package Title:* Occupational Radiation Protection Program; (3) *Type of Review:* Renewal; (4) *Purpose:* The recordkeeping and reporting requirements that comprise this information collection will permit DOE and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation; (5) *Respondents:* 50; (6) *Estimated Number of Burden Hours:* 50,000. *Statutory Authority:* Title 10, Code of Federal Regulations, part 835.

Pursuant to the Paperwork Reduction Act of 1995, Agency Information Collection Extension.

Issued in Washington, DC, on August 24, 2007.

Lesley A. Gasperow,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. E7–17843 Filed 9–10–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Amended Record of Decision: Storage of Surplus Plutonium Materials at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Amended Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) is amending the Record of Decision (ROD) for the *Storage and Disposition of Weapons—Usable Fissile Materials Programmatic Environmental Impact Statement* (DOE/EIS–0229, 1996; Storage and Disposition PEIS). Specifically, DOE has decided to take the actions necessary to transfer approximately 2,511 additional 3013-compliant packages [1] containing surplus non-pit weapons-usable plutonium metals and oxides to the Savannah River Site (SRS), near Aiken, South Carolina. Approximately 2,300 containers will be transferred from the Hanford Site (Hanford) near Richland, Washington; 115 containers will be transferred from the Lawrence Livermore National Laboratory (LLNL) in California; and 96 containers will be transferred from the Los Alamos National Laboratory (LANL) in New Mexico. All 3013 containers will be shipped inside Type B shipping packages (e.g., 9975 packages) in Safe Secure Transports (SSTs). In addition, DOE could transfer the equivalent of about one thousand 3013 containers, in the form of unirradiated fuel assemblies originally intended for the Fast Flux Test Facility (FFTF) at Hanford, and miscellaneous fuel pins that that were not put into fuel assemblies, to the SRS.[2] At a lower priority and only if adequate storage space is available, DOE will transfer approximately five hundred additional 3013 containers from LLNL and LANL to provide operational flexibility in the laboratories and to alleviate the demands there on storage capacity needed to support nuclear weapons research missions. Surplus plutonium in 3013-compliant containers will be stored in the K-Area Material Storage (KAMS) facility and FFTF fuel will be stored in the K-Area complex.

This action will consolidate storage of surplus, non-pit weapons-usable plutonium from Hanford, LANL, and LLNL at SRS, pending disposition.[3]

DOE has prepared a Supplement Analysis (SA), *Storage of Surplus Plutonium Materials at the Savannah River Site* (DOE/EIS–0229–SA–4, August 2007), in accordance with DOE National Environmental Policy Act (NEPA) regulations (10 CFR 1021.314) to determine whether consolidated storage of this plutonium is a substantial change to the proposed action or whether there are significant new circumstances or information relevant to environmental concerns such that a supplemental EIS or a new EIS would be needed. Based on the SA, DOE has determined that no further review under NEPA is required.

FOR FURTHER INFORMATION CONTACT: Copies of NEPA documents related to this decision, including this Amended ROD, are available on DOE's NEPA Web site at: *http://www.eh.doe.gov/nepa.* To request copies of these documents, please contact: The Center for Environmental Management Information, P.O. Box 23769, Washington, DC 202–586–3769, Telephone: 800–736–3282 (in Washington, DC: 202–863–5084).

For further information concerning the storage of surplus, non-pit plutonium at the SRS, contact: Andrew R. Grainger, NEPA Compliance Officer, Savannah River Operations Office, U.S. Department of Energy, P.O. Box B, Aiken, South Carolina 29802, Telephone: (803) 952–8001, E-mail: *drew.grainger@srs.gov.*

For information on DOE's NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

At the end of the Cold War, the United States declared large quantities of plutonium and uranium surplus to the defense needs of the nation. At that time, materials were in various forms and various stages of the material manufacturing and weapons fabrication processes and located at several weapons complex sites that DOE had operated in the preceding decades. DOE began the process of placing these materials in safe, stable configurations suitable for storage until disposition strategies could be developed and implemented. Through a series of decisions supported by appropriate NEPA analyses, DOE has decided to store surplus, non-pit, weapons-usable

[1] A container that complies with DOE–STD–3013, Stabilization, Packaging, and Storage of Plutonium-Bearing Materials.

[2] The use of FFTF and the unirradiated fuel currently at Hanford is being considered in conjunction with the evaluation of reasonable alternatives in the Global Nuclear Energy Partnership (GNEP) Programmatic EIS. The planned shipment of the FFTF unirradiated fuel to SRS is scheduled for the second half of Fiscal Year 2009. If FFTF is still being considered as part of GNEP following completion of the PEIS (expected in 2008), DOE may choose not to ship the unirradiated FFTF fuel to SRS.

[3] Based on DOE's current surplus plutonium disposition plans, DOE expects to disposition the surplus plutonium stored in KAMs in less than 20 years. DOE has analyzed the potential environmental impacts of storage of such plutonium in KAMs for up to 50 years.

plutonium materials at SRS facilities pending disposition. DOE's Supplement Analysis, *Storage of Surplus Plutonium Materials at the Savannah River Site,* (DOE/EIS–0229–SA–4, August 2007), describes the NEPA reviews and DOE's decisions regarding transportation and storage of plutonium materials. Prior NEPA reviews and accompanying decisions that are directly related to today's decision are described in the following paragraphs.

In an April 19, 2002 (67 FR 19432), Amended Record of Decision (ROD), DOE announced its decision to immediately consolidate long-term storage in the K-Area Material Storage (KAMS) facility at SRS of surplus, non-pit plutonium from the Rocky Flats Environmental Technology Site (RFETS). In addition, DOE noted that cancellation of the then-planned immobilization facility for surplus plutonium disposition and the selection of the long-term storage alternative at SRS removed the basis for the contingency contained in previous RODs (which conditioned transport of surplus, non-pit plutonium from RFETS to SRS on the selection of SRS as the site for the immobilization facilities), and amended those RODs accordingly. DOE also stated that long-term storage of surplus plutonium and the ultimate disposition of that plutonium were separate actions, and that combining long-term storage and disposition was not required to implement either decision, and served no significant programmatic objective. Transfer of plutonium materials from RFETS to SRS was completed in 2003 and these materials are stored in 3013 containers inside 9975 shipping packages in the KAMS facility. In the 2002 Amended ROD, DOE left unchanged it's prior decision to store surplus, non-pit plutonium at Hanford, Idaho National Laboratory (INL), and LANL, pending disposition (or movement to lag storage at the disposition facility).[4]

Following the events of September 11, 2001, DOE revised the threat criteria and the postulated capabilities of those who might perpetrate acts of violence against DOE assets. As a result of this new threat guidance, DOE determined that the consolidation of plutonium at SRS into one location—KAMS—and enhancement of the security of that location, would provide the most advantageous means to meet this challenge and assure the safety and security of the stored material. Therefore, DOE cancelled a project to install stored surveillance and stabilization capability to ensure compliance with DOE–STD–3013 in F-Area and decided to construct the K-Area Interim Surveillance (KIS) project and the Container Surveillance and Storage Capability (CSSC) project in the K-Area complex. DOE prepared an environmental assessment, *Safeguards and Security Upgrades for Storage of Plutonium Materials at the Savannah River Site* (DOE/EA–1538, December 2005) and issued a Finding of No Significant Impact (FONSI) in December of 2005, to address the impacts of these and related security projects. The EA addressed surplus plutonium materials in the SRS inventory as of December 2005. The KIS Project, which became operational in June 2007, and the CSSC project, which is currently scheduled for operations in 2010, will provide surveillance and stabilization capability and capacity for storage of 3013 containers outside of KAMS (but in the K-Area complex) adequate to support the surveillance program required by DOE–STD–3013.

Decision: Consistent with DOE's prior decision to reduce over time the number of locations where the various forms of plutonium are stored, DOE has decided to consolidate storage of surplus, non-pit, weapons-usable plutonium from Hanford, LANL, and LLNL at SRS, pending disposition. Following appropriate congressional notification, in accordance with section 3155 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107), DOE will transfer, over a period of about two to three years, approximately 2,511 additional 3013-compliant packages [5] containing plutonium metals and oxides to SRS. Approximately 2,300 containers will be transferred from Hanford, 115 containers will be transferred from LLNL, and 96 containers will be transferred from LANL. All 3013 containers will be shipped inside Type B shipping packages (e.g., 9975 packages) in Safe Secure Transports (SSTs). All containers will be certified compliant with DOE–STD–3013 and Department of Transportation requirements prior to shipment, and DOE will acquire and obtain certification of additional shipping containers, if needed.

In addition, DOE could transfer the equivalent of about one thousand 3013 containers, in the form of unirradiated fuel assemblies and miscellaneous fuel pins originally intended for the Fast Flux Test Facility (FFTF) at Hanford, to the SRS.[6] This material will be shipped in Type B shipping packages, in SSTs, and stored in the K-Area Complex in the Type B shipping packages, pending disposition. DOE will monitor the condition of the shipping packages while in storage to insure their integrity, including inspection of seals to monitor for corrosion or leakage. DOE will continue to store RFETS and SRS surplus, non-pit plutonium in approximately 2,800 containers inside Type B shipping packages at SRS. Storage will be in compliance with applicable Technical Safety Requirements (TSRs) and Safety Analysis Reports (SARs), and the total mass of stored plutonium will be significantly less than 15 metric tons. DOE has previously evaluated storage of non-pit surplus plutonium from RFETS and other DOE sites, as needed, in KAMS (*Supplement Analysis for Storing Plutonium in the Actinide Packaging and Storage Facility and the Building K–105 at the Savannah River Site.* (DOE/EIS–0229–SA–1, July 1998).

In addition, DOE will transfer approximately five hundred 3013 containers from LLNL and LANL to remove surplus inventory, provide operational flexibility, and to alleviate the demands there on storage capacity needed to support nuclear weapons research missions. This transfer will take place only if storage space is available in KAMS. Space is limited by the number of storage positions allowed in recognition of the spacing requirements dictated by the TSRs and SARs. DOE could increase the number of storage spaces by modifying the storage configuration after review, and revision as necessary, of the safety authorization basis.

DOE will use the KAMS facility for consolidated storage. Nearby areas of the K-Area complex, where the KIS is and CSSC will be located, will be used for surveillance and restabilization activities. Storage spaces necessary to support surveillance activities are available in the K-Area complex. Unirradiated FFTF fuel will also be stored in the K-Area complex.

Basis for Decision: DOE's decision to consolidate surplus plutonium at SRS will reduce the number of sites with

[4] DOE indicated in the Storage and Disposition PEIS ROD (DOE, 1997) that 0.3 metric tons of plutonium stored at LLNL was primarily research and development and operational feedstock material not surplus to government needs, and that the material would continue to be stored for use at LLNL. DOE has since determined that there is no programmatic need for this material, and that transferring the material to SRS for long-term storage would reduce surveillance costs at LLNL. In 1999, DOE determined that 3 to 4 metric tons of plutonium material will be retained at the Idaho National Laboratory for potential future use.

[5] A 3013 container has a maximum capacity of about 4.4 kilograms of plutonium. However, few containers have the maximum amount of plutonium.

[6] See footnote 2.

special nuclear material; enhance the security of these materials; reduce the risk plutonium poses to the public and environment; reduce or avoid the costs associated with plutonium storage, surveillance and monitoring, and security at multiple sites; and relocate the material to DOE's planned site for surplus plutonium disposition. Plutonium consolidation has been encouraged by independent reviews of DOE's activities, including the Government Accountability Office (GAO) in its July 2005 report entitled *Securing U.S. Nuclear Materials: DOE Needs to Take Action to Safely Consolidate Plutonium* (GAO–05–665) and recently by the Defense Nuclear Facilities Safety Board (DNFSB). In its June 26, 2007, report to Congress, the DNFSB stated: ''The Board believes consolidation of excess plutonium into a single, robust facility suitable for extended retrievable storage is logical from a safety perspective. DOE should aggressively pursue consolidation of its excess plutonium.'' Furthermore, transferring within the next two to three years all the surplus plutonium currently at Hanford to SRS would enhance security and avoid the expenditure of about $200 million for security upgrades to be compliant with DOE's 2005 Design Basis Threat (DBT) guidance, as well as tens of millions of dollars more each year for security and monitoring to continue storing the material at Hanford.

Separately from the consolidation and storage activities DOE is announcing today, DOE is preparing a *Supplemental Environmental Impact Statement for Surplus Plutonium Disposition at the Savannah River Site* to evaluate the potential environmental impacts of alternative methods to disposition surplus, non-pit plutonium materials. The action alternatives identified in the Notice of Intent (72 FR 14543; March 28, 2007) for this Supplemental EIS involve: (1) A glass can-in-canister approach that would be installed in K-Area; (2) a ceramic can-in-canister approach that would be installed in K-Area; and (3) the Mixed Oxide (MOX) Fuel Fabrication Facility, currently under construction at SRS. In conjunction with any of these alternatives, DOE would utilize the existing H-Canyon and Defense Waste Processing Facility (DWPF) for the disposition of up to about four metric tons of surplus, non-pit plutonium materials. DOE's selection of one or more of these alternatives would ensure that surplus, weapons-usable plutonium that is currently at SRS, or that would be shipped to SRS as a result of the actions evaluated in this SA, would be placed in a form that would facilitate a disposition path out of South Carolina.

Supplement Analysis: DOE prepared a Supplement Analysis (*Storage of Surplus Plutonium Materials at the Savannah River Site,* (DOE/EIS–0229–SA–4, August 2007) to determine if consolidating storage at SRS of surplus, non-pit, weapons-usable plutonium from Hanford, LLNL, and LANL represented new circumstances or information requiring preparation of a supplemental EIS or a new EIS. The environmental impacts discussed in the SA are described in the following paragraphs.

Transportation

DOE will ship plutonium materials compliant with the DOE-STD–3013 in 3013 packages inside Type B shipping containers (e.g., 9975 containers) from Hanford, LLNL, and LANL to KAMS at SRS using SSTs. DOE will ship unirradiated FFTF fuel from Hanford to SRS in Type B shipping packages (e.g., the Hanford Un-irradiated Fuel Package) in SSTs. At KAMS, the 9975 containers will be received and stored; the 3013 packages will not be removed from the 9975 shipping containers. The Type B shipping packages containing the unirradiated FFTF fuel will be stored in the K-Area complex at SRS.

DOE previously evaluated the impacts of transporting 17 metric tons of non-pit, surplus plutonium to SRS in the *Surplus Plutonium Disposition* (SPD) EIS (DOE/EIS–0283, 1999), which addressed alternatives for disposition and was tiered from the Storage and Disposition PEIS. In the SPD EIS Alternative 3, DOE analyzed the transportation of surplus pit and non-pit plutonium to SRS. Table L–1 of the SPD EIS summarized the material shipments; included were surplus non-pit weapons-usable plutonium materials from Hanford, LLNL, LANL, RFETS, and INL (Argonne National Laboratory—West). The Hanford material specifically included FFTF fuel pins and assemblies. Alternative 3 included shipment of a greater quantity of surplus, non-pit plutonium materials to SRS than does the consolidation decision DOE is announcing today.

In the SPD EIS, DOE estimated that normal (incident-free) transportation operations could result in 0.024 latent cancer fatalities (LCF) among transportation workers and 0.034 LCF in the total affected population over the duration of the transportation activities. In preparing the SPD EIS, DOE used a dose conversion factor of 5×10^{-4} deaths per rem of dose to the affected population. Currently, DOE recommends a dose conversion factor of 6×10^{-4} deaths per rem. Using the currently recommended dose conversion factor, the estimated risk would be about 0.029 LCF among transport workers and about 0.041 LCF in the total affected population. In addition, DOE estimated that 0.019 nonradiological fatalities could occur as a result of vehicular emissions. DOE also estimated the impacts of accident scenarios, and in all cases the risk of a fatality is less than one. No accidents occurred during shipment of the RFETS plutonium to the SRS.

DOE has analyzed the impacts of transporting plutonium from Hanford, LLNL, and LANL (as well as INL and RFETS) to SRS in the SPD EIS. That analysis assumed that surplus non-pit plutonium would be transported in Type B containers in SSTs, just as DOE will do for the consolidation action announced today. DOE will make all shipments in shipping packages with current certificates, consistent with Department of Transportation requirements and DOE's prior NEPA reviews. The transportation required to implement this action is a subset of the transportation activities evaluated in the SPD EIS.

Storage

The KAMS facility requires no physical modification to accommodate the proposed storage of surplus, non-pit, weapons-usable plutonium from Hanford, LLNL, and LANL. The environmental impacts of storage of fissile material at SRS were presented in the *Interim Management of Nuclear Materials EIS* (DOE/EIS–0220, October 1995) and the *Storage and Disposition PEIS.* These two EISs contain calculated annual impacts presented over specific time periods. DOE also evaluated storage of surplus plutonium materials from RFETS and other sites, as needed, in 3013 containers inside Type B shipping containers in KAMS, and concluded that KAMS storage for up to 50 years did not represent significant new information relevant to environmental concerns, and that additional NEPA review was not required (DOE/EIS–0229–SA–01, 1998). The consolidated storage action DOE is announcing today involves the same forms of surplus plutonium and the same shipping and storage containers (which would be certified Type B containers), as DOE has previously analyzed.

DOE has initiated two projects to provide the stored plutonium surveillance and restabilization capability required as part of the monitoring program that is an integral

part of DOE–STD–3013. The KIS project, which became operational in June 2007, provides limited, temporary surveillance capability until the CSSC project is completed. Current plans call for the CSSC to be operational in 2010. DOE completed an EA (DOE/EA–1538, December 2005) evaluating the impacts of construction and operation of KIS and CSSC in the K-Area complex (near but not in KAMS), and related security upgrades in K-Area. Storage space adequate for the needs of the KIS and CSSC surveillance activities are provided outside of KAMS and a limited number of 3013 containers will be temporarily stored without Type B shipping containers when CSSC becomes operational. DOE evaluated the impacts of these actions in the EA, and determined the impacts would not be significant (Finding of No Significant Impact (FONSI), (DOE/EA–1538, December 2005). While the inventory in KAMS will increase as a result of the transfer and storage of surplus non-pit plutonium from Hanford, LLNL, and LANL, the number of 3013 containers stored outside of KAMS, or undergoing surveillance activities requiring opening of the cans, will not increase. The number of cans undergoing surveillance activities is limited by the facility safety analysis and technical safety requirements, and neither would change as a result of storing more material in KAMS. Therefore, DOE's action is not different in regard to surveillance actions than those DOE has previously evaluated and found to be insignificant.

DOE has found no anomalous conditions in either the 3013 containers or the stored plutonium material in the DOE–STD–3013 surveillance program. Similarly, performance of the Type B shipping containers has been as expected, with no instances of unacceptable performance. The K-Area Structural Assessment Program, mentioned in the 2002 ROD, has not revealed any condition or degradation that would affect the structural integrity of the facility.

Unirradiated fuel from the FFTF facility at Hanford will be stored in Type B shipping packages in the K-Area transfer bay in the K-Area complex. Storage of FFTF fuel in Type B shipping containers in the K-Area transfer bay will provide a level of safety equivalent to that resulting from storage of plutonium in 3013 containers inside 9975 shipping packages in KAMS. In addition, DOE evaluated the storage of irradiated tritium-producing burnable absorber rods in Type B shipping containers (the same configuration for the storage of FFTF fuel) in the K-Area transfer bay (DOE/EA–1528, *Storage of Tritium-Producing Burnable Absorber Rods in K-Area Transfer Bay at SRS*, June 2005) and found the environmental impacts to be insignificant (FONSI, DOE/EA–1528, June 2005).

Intentional Destructive Acts

DOE provides substantial safeguards and security measures for both transportation and storage of plutonium. Safeguards and security are designed to prevent theft or diversion of materials, and to prevent exposure of workers and the public to radiation from the material during transportation and storage. DOE recognizes that an attack against surplus plutonium cargo may cause very undesirable consequences, such as release of radionuclides into the environment.

Following the events of September 11, 2001, DOE is continuing to consider and implement measures to minimize the risk and consequences of potential terrorist attacks on DOE facilities and activities. DOE conducts vulnerability assessments and risk analyses in accordance with DOE Order 470.3A, *Design Basis Threat Policy* and DOE Order 470.4A, *Safeguards and Security Program.* The safeguards applied to protecting the K-Area complex involve a dynamic process of enhancement to meet threats, and those safeguards will evolve over time. It is not possible to predict whether intentional destructive acts would occur at these locations, or the nature or types of attacks. Nevertheless, DOE has evaluated security scenarios involving malevolent or terrorist acts in an effort to assess potential vulnerabilities and identify improvements to security procedures and response measures. The physical security protection strategy is based on a graded and layered approach supported by a guard force trained to detect, deter, and neutralize adversary activities. Facilities are protected by staffed and automated access control systems, barriers, surveillance systems and intrusion detection systems.

Plutonium materials intended for consolidated storage would be received and stored in the K-Area Complex. DOE evaluated accident scenarios during storage of plutonium materials in the *Interim Management of Nuclear Materials EIS* (DOE/EIS–0220, October 1995). DOE finds that the accident impacts are representative of the potential impacts of intentional destructive acts against the facilities proposed for consolidated storage, particularly in light of the robust nature of the facilities themselves and the improved security and response measures that have been put in place in recent years.

In the SPD EIS, DOE evaluated the impacts of a severe accident while transporting plutonium oxide material in Type B shipping containers in Safe Secure Transports (SSTs). The hypothetical accidents modeled for the impact assessment involve either a long-term fire or tremendous impact of crushing forces. In the case of crushing forces, a fire would have to be burning in order to spread the plutonium as modeled. These accidents were assumed to cause a ground-level release of 10 percent of the radioactive material in the SST. These accidents fall within the Nuclear Regulatory Commission's severity Category VIII, with an accident frequency in rural areas of about 1×10^{-7} per year (once in 10 million years). DOE estimated that if such an accident were to occur in an urban area as many as 114 cancer fatalities could result. In addition, the accident itself would cause a number of non-radiological fatalities, depending upon the specific circumstances.

In reviewing the nature and consequences of the accident scenarios described in the SPD EIS, DOE finds that the consequences bound the consequences of a hypothetical terrorist attack on an SST carrying surplus non-pit plutonium. Because of the robust nature of the Type B containers and the SSTs, and because shipments are protected, DOE finds it unlikely that an attack could generate the forces required to release as much material as postulated for a severe accident. Therefore, DOE expects the potential consequences of a terrorist attack on a shipment of surplus, non-pit plutonium to be equal to or less than those of a severe accident.

Defense Nuclear Facilities Safety Board Report to Congress

In December 2003, the Defense Nuclear Facilities Safety Board (DNFSB) issued a Report to Congress on Plutonium Storage at the Department of Energy's Savannah River Site. The DNFSB is an independent Federal agency chartered by Congress to provide recommendations to the Department of Energy on the safety of defense nuclear facilities. The Board's report contains proposals for enhancing the safety, reliability, and functionality of plutonium storage at SRS; one proposal concerns KAMS and four concern F-Area. However, subsequent to issuance of the Board's report, DOE decided to utilize only KAMS and the K-Area complex for storage of plutonium and for future stabilization and packaging operations, and to deinventory F-Area of all plutonium prior to the end of 2006.

With respect to KAMS, the Board proposed that fire protection systems be installed and that unnecessary combustibles be eliminated. In response to this proposal, the Department determined that fire suppression equipment would be installed in the Neutron Multiplicity Counting Room of KAMS, fire detection equipment would be installed throughout KAMS, and the cable combustible load in the actuator tower above KAMS would be removed. DOE completed removal of the actuator tower cables in August 2006. DOE plans to begin installation of a fire detection system in KAMS in 2007 and complete it in 2008. DOE also plans to begin installation of a fire suppression system in the Neutron Multiplicity Counting Room in 2008 and complete the installation in 2009.

In addition, the fire protection posture designed into KAMS was to minimize both transient and fixed combustibles within the facility such that the remaining worst possible fire could not cause a release of plutonium. The walls separating the KAMS facility from the remainder of the K-Reactor building were fabricated into a two-hour fire boundary. Combustibles outside the facility fire boundaries were minimized, contained, or mitigated to ensure the KAMS facility fire boundaries were rated longer than any credible fire would burn.

Supplement Analysis Conclusion And Determination: DOE has fully evaluated transportation of surplus, non-pit plutonium materials for SRS and storage at SRS of such materials from Hanford and LANL in the Storage and Disposition PEIS and SPD EIS. The action announced today, consolidated storage of surplus, non-pit plutonium materials at SRS, including transportation of the materials to SRS, is addressed in the Storage and Disposition PEIS, the SPD EIS, and other NEPA reviews addressed above. DOE evaluated the potential impacts of conducting plutonium surveillance and stabilization activities required by DOE–STD–3013 in the *Environmental Assessment for the Safeguards and Security Upgrades for Storage of Plutonium Materials at the Savannah River Site,* and found the impacts to be insignificant. Some of these documents are now 10 or more years old. However, DOE has reviewed the analyses and assumptions relevant to the potential environmental impacts of the actions described herein and found any changes to be insignificant.

DOE's 2007 SA shows that the potential environmental impacts associated with the further consolidation of surplus non-pit, weapons-usable plutonium from Hanford, LLNL and LANL would not be a significant change from the potential environmental impacts associated with the alternatives analyzed in previous NEPA reviews. DOE is not proposing a substantial change that is relevant to environmental concerns. No significant new circumstances or information bearing on the proposed action and relevant to environmental concerns are presented by the proposed consolidation of plutonium storage. Therefore, DOE does not need to conduct additional NEPA review prior to transferring surplus non-pit plutonium materials from Hanford, LLNL, and LANL to SRS for consolidated storage pending disposition, as described above.

Issued in Washington, DC, this 5th day of September, 2007.

James A. Rispoli,

Assistant Secretary for Environmental Management.

[FR Doc. E7–17840 Filed 9–10–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1222–000; Docket No. ER07–1223–000]

CR Clearing, LLC; Cow Branch Wind Power, LLC; Notice of Issuance of Order

September 4, 2007.

CR Clearing, LLC and Cow Branch Wind Power, LLC (collectively, ''the Applicants'') filed applications for market-based rate authority, with accompanying market-based rate tariffs. The proposed market-based rate tariffs provide for the sale of energy and capacity at market-based rates. The Applicants also requested waivers of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approvals under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On August 31, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by the Applicants, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is October 1, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of the Applicants' issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17855 Filed 9–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1246–000]

Harvest Windfarm, LLC; Notice of Issuance of Order

September 4, 2007.

Harvest Windfarm, LLC (Harvest) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and

capacity at market-based rates. Harvest also requested waivers of various Commission regulations. In particular, Harvest requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Harvest.

On August 31, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Harvest, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is October 1, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Harvest is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Harvest, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Harvest's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17854 Filed 9–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR07–16–000]

North American Electric, Reliability Corporation; Notice of Amendment to the File

September 4, 2007.

Take notice that on August 31, 2007, the North American Electric Reliability Corporation submitted an amendment to their August 24, 2007 filing of the 2008 Business Plans and Budgets of Regional Entities, and the 2008 funding request of the Western Interconnection Regional Advisory Body.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17852 Filed 9–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI07–12–000]

Ken Howard; Notice of Petition for Declaratory Order and Soliciting Comments, Motions to Intervene, and Protests

September 4, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Petition for Declaratory Order.

b. *Docket No.:* DI07–12–000.

c. *Date Filed:* August 15, 2007.

d. *Applicant:* Ken Howard.

e. *Name of Project:* Keene Channel/Howard Micro-Hydro Project.

f. *Location:* The Keene Channel/Howard Micro-Hydro Project is located on an unnamed stream on Kupreanof Island, near Petersburg, Alaska, affecting T. 6 S., R. 80 E., sec. 6, Copper River Meridian. The project does not occupy any tribal or federal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Ken Howard, P.O. Box 2067, Petersburg, Alaska, 99833; Telephone: (907) 518–1886; e-mail: *howardak@starband.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or E-mail: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments and/or motions:* October 4, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at: *http://www.ferc.gov.*

Please include the docket number (DI07–12–000) on any protests, comments and/or motions filed.

k. *Description of Project:* The existing project consists of: (1) A 30-inch-long weir in the unnamed stream, forming a small reservoir; (2) a 6-inch-diameter, 550-foot-long PVC pipe; (3) a 1–kW Stream Engine turbine, connected to a battery bank through a Zantex 4848 inverter; and (4) appurtenant facilities. The facility is not connected to an interstate grid.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre–1935 design or operation.

l. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, and/or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17856 Filed 9–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–521–000]

New York Independent System Operator, Inc.; Notice of Agenda and Procedures for Staff Technical Conference

September 4, 2007.

This notice establishes the agenda and procedures for the staff technical conference to be held on September 10, 2007.[1] The technical conference will be held from 10 a.m. to 3 p.m. (EDT), in conference room 3M–2A/B at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to attend and registration is not required; however, active participation will be limited to those parties who have previously requested to intervene in this proceeding.

The Commission's July 27, 2007 order in this proceeding directed its staff to hold a technical conference to address the issues raised by New York Independent System Operator, Inc.'s (NYISO) February 5, 2007 compliance filing submitted in response to Order Nos. 681 and 681–A.[2] In accordance with the July 27 Order, staff will conduct the conference according to the following agenda:

Item 1—Guideline (5)

- NYISO presentation illustrating the amount of load municipal systems are able to hedge with long-term firm transmission rights (FTRs).
- Discussion regarding the manner by which load-serving entities are able to meet their reasonable needs with long-term FTRs in a non-discriminatory manner.

Item 2—Guideline (7)

- Discussion of the price certainty in issues relating to the allocation of long-term FTRs and computational issues relating to the crediting of transmission congestion contract revenues directly to the holders of the rights.
- Discussion of valuation and cost shifting issues that may arise relating to long-term FTRs.
- Discussion of alternative methods of allocating long-term FTRs.
- Discussion of related matters arising from the previous issues.

Commission staff has arranged for telephone conferencing should any party wish to listen to the proceeding remotely. Any parties that plan to attend by phone should contact Elizabeth Slease by e-mail at *elizabeth.slease@ferc.gov* no later than September 6, 2007 to request the call-in instructions.

The technical conference will be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact Ace-Federal Reporters, Inc., at 202–347–3700, or 1–800–336–6646. Two weeks after the technical conference, the transcript will be available for free on the Commission's e-library system.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17853 Filed 9–10–07; 8:45 am]

BILLING CODE 6717–01–P

[1] The initial notice establishing the date of this technical conference was issued on August 7, 2007. A subsequent notice, issued on August 15, 2007, changed the date to September 10, 2007. The technical conference was directed by Commission order issued on July 27, 2007. *See New York Independent System Operator, Inc.*, 120 FERC ¶ 61,099 (2007) (July 27 Order).

[2] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g and clarification*, Order No. 681–A, 117 FERC ¶ 61,201 (2006).

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–3842]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date and agenda of its Consumer Advisory Committee (''Committee''). The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The meeting of the Committee will take place on Thursday, September 27, 2007, 3 p.m. to 5 p.m., at the Commission's Headquarters Building, Room 3–B516.

ADDRESSES: Federal Communications Commission, 445 12th Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer & Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *scott.marshal@fcc.gov*.

SUPPLEMENTARY INFORMATION: On September 5, 2007, the Commission released document DA 07–3842, which announced the agenda, date and time of the Committee's next meeting. At its September 27, 2007 meeting, the Committee will receive and consider draft comments prepared by members of its DTV Working Group in connection with the DTV Consumer Education Initiative, MB Docket No. 07–148. The Committee will have an opportunity to debate, amend, reject, or adopt these comments prior to their transmittal to the Commission. A limited amount of time on the agenda will be available for oral comments from the public.

The Committee is organized under and operates in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988). The meeting is open to the public. Members of the public may address the Committee or may send written comments to: Scott Marshall, Designated Federal Officer of the Committee, at the address indicated on the first page of this document. The meeting site is accessible to people with disabilities. Meetings are sign language interpreted with real-time transcription and assistive listening devices available. Meeting agendas are provided in accessible formats.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Thomas Wyatt,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E7–17870 Filed 9–10–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report) for banks and the Thrift Financial Report (TFR) for savings associations, which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before November 13, 2007.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036, March 2008'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's

Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Steven F. Hanft (202–898–3907), Clearance Officer, Attn: Comments, Room MB–2088, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–0023 (TFR: Schedule DI Revisions),'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include ''1550–0023 (TFR: March 2008 Revisions)'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–0023 (TFR: March 2008 Revisions).''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''1550–0023 (TFR: March 2008 Revisions).''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0*).

OCC: Mary Gottlieb, OCC Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report and the TFR, which are currently approved collections of information.[1]

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,750 national banks.

Estimated Time per Response: 45.42 burden hours.

Estimated Total Annual Burden: 317,967 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 885 state member banks.

Estimated Time per Response: 52.07 burden hours.

Estimated Total Annual Burden: 184,328 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,218 insured state nonmember banks.

Estimated Time per Response: 36.16 burden hours.

Estimated Total Annual Burden: 754,732 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 635 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

OTS:

OMB Number: 1550–0023.

[1] The proposed changes to the Call Report and the TFR that are the subject of this notice would take effect March 31, 2008. The banking agencies (the OCC, the Board, and the FDIC) are also considering a separate proposal to incorporate the FDIC's Summary of Deposits report (OMB No. 3064–0061) into the Call Report effective June 30, 2008. If the FFIEC and the banking agencies approve the proposed inclusion of the Summary of Deposits in the Call Report, the banking agencies will publish a request for comment on this proposal in accordance with the requirements of the Paperwork Reduction Act of 1995.

Estimated Number of Respondents: 838 savings associations.

Estimated Time per Response: 36.50 burden hours.

Estimated Total Annual Burden: 193,881 burden hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for savings associations). Except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

Current Actions

I. Overview

The four agencies are proposing to revise the Call Report and TFR instructions for reporting daily average deposit data by newly insured institutions for deposit insurance assessment purposes to conform the instructions with the FDIC's assessment regulations (12 CFR Part 327). These revisions are discussed in Section II.A of this notice.

In addition, the OCC, the Board, and the FDIC (the banking agencies) propose to implement a number of other changes to the Call Report requirements, which are discussed in detail in Sections II.B through II.F of this notice. The OTS may issue a separate notice and request for comment if it determines that the TFR should be revised to include some or all of the proposed changes to the Call Report. The Call Report changes include several related to 1–4 family residential mortgage loans such as reporting interest and fee income on and the quarterly average for such mortgages separately from income on and the quarterly average for all other real estate loans and the addition of new items for restructured troubled mortgages and mortgage loans in process of foreclosure. Call Report Schedule RC–P on closed-end 1–4 family residential mortgage banking activities, which is completed by larger banks and smaller banks with a significant level of such activities, would be expanded to include originations, purchases, and sales of open-end mortgages as well as closed-end and open-end mortgage loan repurchases and indemnifications during the quarter. The Call Report's trading account definition would be modified in response to the creation of a fair value option in generally accepted accounting principles (GAAP). Call Report Schedule RC–Q, which collects data on fair value measurements for trading assets and liabilities and other assets and liabilities accounted for under a fair value option, and certain other schedules, including the loan schedule (Schedule RC–C), would also be revised to enhance the information available on instruments accounted for under this option. Revisions would also be made to the schedule on trading assets and liabilities (Schedule RC–D). The Call Report instructions would be clarified for reporting credit derivative data in the risk-based capital schedule (Schedule RC–R) and a corresponding change would be made to the schedule itself. The threshold for reporting significant items of other noninterest income and expense in the explanations schedule (Schedule RI–E) would also be changed. The instructions for reporting fully insured brokered deposits in Schedule RC–E, Deposit Liabilities, would be revised to conform to the instructions for reporting time deposits in this schedule.

The preceding proposed revisions to the Call Report and the TFR, which have been approved for publication by the FFIEC and are discussed in more detail below, would take effect as of March 31, 2008. The specific wording of the captions for the new or revised Call Report data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

Finally, the banking agencies request comment on a plan to discontinue the mailing of paper Call Report forms and instructions to banks, which is discussed in Section III of this notice.

Type of Review: Revision and extension of currently approved collections.

II. Discussion of Proposed Revisions

A. Reporting of Data for Deposit Insurance Assessments in the Call Report and TFR by Newly Insured Institutions

Section 327.5(a)(1) of the FDIC's assessment regulations (12 CFR 327.5(a)(1)) states that ''[a]n institution that becomes newly insured after the first report of condition allowing for average daily balances shall have its assessment base determined using average daily balances.'' For purposes of these regulations, the term ''report of condition'' includes the Call Report and the TFR. Both of these reports first allowed an institution to report average daily balances for the deposit data used to determine its assessment base as of the March 31, 2007, report date. This change was introduced as of that date in conjunction with a revision and reduction in the overall reporting requirements related to deposit insurance assessments in Call Report Schedule RC–O and TFR Schedule DI that was intended to simplify regulatory reporting. As part of these revised overall reporting requirements, the agencies provided an interim period covering the March 31, 2007, through December 31, 2007, report dates during which each institution has the option to submit its Call Reports or TFRs using either the current or revised formats for reporting the data used to measure their assessment base. The revised reporting format will take effect for all institutions on March 31, 2008, at which time the current reporting format will be eliminated.

The instructions issued in March 2007 for the revised reporting format state that an institution that becomes newly insured on or after April 1, 2008, would be required to report daily average balances beginning in the first quarterly Call Report or TFR that it files. However, these instructions do not conform to the previously cited language in the FDIC's assessments regulations with respect to their treatment of institutions that become insured between April 1, 2007, and March 31, 2008. Therefore, the agencies are revising the instructions to Call Report Schedule RC–O and TFR Schedule DI to require an institution that becomes insured after March 31, 2007, but on or before March 31, 2008, to begin reporting daily average balances in its Call Report or TFR for the March 31, 2008, report date. The requirement for an institution that

becomes insured on or after April 1, 2008, to report daily average deposit data beginning in its first quarterly Call Report or TFR would remain in effect.

B. Call Report Revisions Related to 1–4 Family Residential Mortgage Loans

Since year-end 2000, commercial bank holdings of 1–4 family residential mortgage loans in domestic offices have increased nearly 108 percent to more than $1.9 trillion. Nearly 98 percent of all banks hold such mortgages. 1–4 family residential mortgages now represent the single largest category of loans held by commercial banks, surpassing commercial and industrial loans as the largest category in 2002. As a percentage of total loans and leases at commercial banks, 1–4 family residential mortgages have grown from 24 percent at year-end 2000 to 32 percent at year-end 2006. Similarly, 1–4 family residential mortgages have increased from less than 15 percent of total assets to nearly 19 percent of total assets during this period. During the first quarter of 2007, bank originations and purchases of closed-end 1–4 family residential mortgages for resale exceeded $287 billion. There has been a growing use of nontraditional residential mortgage products and an increasing number of banks offering such products. In addition, the volume of 1–4 family residential mortgage loans extended to subprime borrowers has increased. At the same time, home prices have stagnated or even declined in many areas of the country. The higher concentration of 1–4 family residential mortgages across the industry and the changing risk profile of the loans with which banks are associated in some capacity has led the banking agencies to evaluate the information they collect about such loans in the Call Report. As a result, the banking agencies are proposing several Call Report changes that are intended to enhance their ability to monitor the nature and extent of banks' involvement with 1–4 family residential mortgage loans as originators, holders, sellers, and servicers of such loans.

1. Interest and Fee Income and Quarterly Average

At present, banks report the total amount of interest and fee income on their ''Loans secured by real estate'' (in domestic offices) in the Call Report income statement (Schedule RI, item 1.a.(1)(a) on the FFIEC 031 and item 1.a.(1) on the FFIEC 041) and the quarterly average for these loans (in domestic offices) in the quarterly averages schedule (Schedule RC–K, item 6.a.(2) on the FFIEC 031 and item 6.b on the FFIEC 041). The banking agencies are proposing to split these existing income statement and quarterly average items into separate items for the interest and fee income on and the quarterly averages of ''Loans secured by 1–4 family residential properties'' and ''All other loans secured by real estate.''

2. Restructured Mortgages

Banks currently report information on the amount of loans whose terms have been modified, because of a deterioration in the financial condition of the borrower, to provide for a reduction of either interest or principal. When such restructured loans are past due 30 days or more or are in nonaccrual status in relation to their modified terms as of the report date, they are reported in Schedule RC–N, Memorandum item 1. In contrast, when such restructured loans are less than 30 days past due and are not otherwise in nonaccrual status, that is, when they are deemed to be in compliance with their modified terms as discussed in the Call Report instructions, banks report the amount of these loans in the Call Report loan schedule (Schedule RC–C, part I, Memorandum item 1). However, the instructions advise banks to exclude restructured loans secured by 1–4 family residential properties from these Memorandum items.

This exclusion was incorporated into the Call Report instructions because the original disclosure requirements for troubled debt restructurings under GAAP provided that creditors need not disclose information on restructured real estate loans secured by 1–4 family residential properties.[2] However, this exemption from disclosure under GAAP has since been eliminated.[3] Accordingly, the banking agencies are proposing to add a new Memorandum item to Schedule RC–C, part I, for ''Loans secured by 1–4 family residential properties (in domestic offices)'' that have been restructured and are in compliance with their modified terms and a new Memorandum item to Schedule RC–N, for restructured ''Loans secured by 1–4 family residential properties (in domestic offices)'' that are past due 30 days or more or in nonaccrual status.

3. Mortgages in Foreclosure

The banking agencies currently collect data on the amount of loans secured by 1–4 family residential properties that are past due 30 days or more or are in nonaccrual status (Schedule RC–N, item 1.c) and on the amount of foreclosed 1–4 family residential properties held by the bank (Schedule RC–M, item 3.b.(3)). However, regardless of whether the bank owns the loans or services the loans for others, banks do not report the volume of 1–4 family residential mortgage loans that are in process of foreclosure, an indicator of potential additions to the bank's ''other real estate owned'' in the near term. The banking agencies propose to add two new Memorandum items for the amount of 1–4 family residential mortgage loans owned by the bank and serviced by the bank that are in foreclosure as of the quarter-end report date. Mortgage loans in foreclosure would be those for which the legal process of foreclosure has been initiated, but for which the foreclosure process has not yet been resolved at quarter-end.[4] These Memorandum items would be added to the Call Report loan schedule (Schedule RC–C, part I) and the servicing, securitization, and asset sale activities schedule (Schedule RC–S), with the carrying amount (before any applicable allowance for loan and leases losses) reported in the former Memorandum item and the principal amount reported in the latter Memorandum item. Reporting mortgage loans as being in process of foreclosure will not exempt those loans owned by the bank from being reported as past due or nonaccrual, as appropriate, in Call Report Schedule RC–N, and will not exempt those loans serviced by the bank that are reported in Schedule RC–S, item 1, from being reported as past due, as appropriate, in that schedule.

4. Open-end 1–4 Family Residential Mortgage Banking Activities

Banks with $1 billion or more in total assets and smaller banks that meet certain criteria currently provide data on originations, purchases, and sales of closed-end 1–4 family residential mortgage loans during the quarter arising from their mortgage banking activities in domestic offices in Call Report Schedule RC–P. These banks also report the amount of closed-end 1–4 family residential mortgage loans held

[2] See Financial Accounting Standards Board Statement No. 15, *Accounting by Debtors and Creditors for Troubled Debt Restructurings*, footnote 25.

[3] See Financial Accounting Standards Board Statement No. 114, *Accounting by Creditors for Impairment of a Loan,* paragraph 22(f).

[4] For banks that participate in the Mortgage Bankers Association's (MBA) National Delinquency Survey, the time at which mortgage loans would become reportable as being in process of foreclosure for Call Report purposes would be the same time at which mortgage loans become reportable as being in ''foreclosure inventory'' for MBA survey purposes (although the dollar amount of such loans would be reported in the Call Report while the number of such loans are reported for MBA survey purposes).

for sale at quarter-end as well as the noninterest income for the quarter from the sale, securitization, and servicing of these mortgage loans. Data (other than for noninterest income) is provided separately for first lien and junior lien mortgages in Schedule RC–P. About 650 banks complete Schedule RC–P, less than 300 of which have total assets of less than $1 billion. However, this information does not provide a complete picture of banks' mortgage banking activities since it excludes open-end 1–4 family residential mortgages extended under lines of credit. From year-end 2001 to year-end 2006, bank holdings of 1–4 family residential mortgage loans extended under lines of credit more than tripled to nearly $470 billion. Accordingly, the banking agencies are proposing to expand the scope of Schedule RC–P to include separate items for originations, purchases, and sales of open-end 1–4 family residential mortgages during the quarter; the amount of such mortgages held for sale at quarter-end; and noninterest income for the quarter from the sale, securitization, and servicing of open-end residential mortgages. When reporting the originations, purchases, sales, and mortgages held for sale, banks would report both the total commitment under the line of credit and the principal amount funded under the line. For banks with less than $1 billion in total assets, the criteria used to determine whether Schedule RC–P must be completed would be modified to include both closed-end and open-end 1–4 family residential mortgage bank activities.

5. Mortgage Repurchases and Indemnifications

As a result of its 1–4 family residential mortgage banking activities, a bank may be obligated to repurchase mortgage loans that it has sold or otherwise indemnify the loan purchaser against loss because of borrower defaults, loan defects, other breaches of representations and warranties, or for other reasons, thereby exposing the bank to additional risk. Such information is not currently captured in Call Report Schedule RC–P. Therefore, the banking agencies propose to add four new items to Schedule RC–P to collect data on mortgage loan repurchases and indemnifications during the quarter. For both closed-end first lien and closed-end junior lien 1–4 family residential mortgages, banks would report the principal amount of mortgages repurchased or indemnified. For open-end 1–4 family residential mortgages, banks would report both the total commitment under the line of credit and the principal amount funded under the line for mortgages repurchased or indemnified.

C. Call Report Data on Trading Assets and Liabilities and Other Assets and Liabilities Accounted for Under a Fair Value Option

1. Reporting of Assets and Liabilities Under the Fair Value Option as Trading

On February 15, 2007, the Financial Accounting Standards Board (FASB) issued Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (FAS 159), which is effective for fiscal years beginning after November 15, 2007. Earlier adoption of FAS 159 was permitted as of the beginning of an earlier fiscal year, provided the bank (i) Also adopts all of the requirements of FASB Statement No. 157, *Fair Value Measurements* (FAS 157) at the early adoption date of FAS 159; (ii) has not yet issued a financial statement or submitted Call Report data for any period of that fiscal year; and (iii) satisfies certain other conditions. Thus, a bank with a calendar year fiscal year may have voluntarily adopted FAS 159 as of January 1, 2007. Changes in the fair value of financial assets and liabilities to which the fair value option is applied are reported in current earnings as is currently the case for trading assets and liabilities. Since the fair value option standard allows a bank to elect fair value measurement through earnings for financial assets and financial liabilities, the banking agencies understand that some institutions would like to reclassify certain loans elected to be accounted for under the fair value option as trading assets. The Call Report instructions currently do not allow loans held for sale to be reported as trading assets.

Under FAS 159, all securities within the scope of FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (FAS 115), that a bank has elected to report at fair value under a fair value option should be classified as trading securities. Recognizing the provisions of FAS 159, the banking agencies are proposing the following clarification to the Call Report instructions, including the Call Report Glossary entry for ''Trading Account.'' Banks may classify assets (other than securities within the scope of FAS 115 for which a fair value option is elected) and liabilities as trading if the bank applies fair value accounting, with changes in fair value reported in current earnings, *and* manages these assets and liabilities as trading positions, subject to the controls and applicable regulatory guidance related to trading activities. For example, a bank would generally not classify a loan to which it has applied the fair value option as a trading asset unless the bank holds the loan, which it manages as a trading position, for one of the following purposes: (1) For market making activities, including such activities as accumulating loans for sale or securitization; (2) to benefit from actual or expected price movements; or (3) to lock in arbitrage profits.

2. Revision of Certain Fair Value Measurement and Fair Value Option Information in the Call Report

Effective for the March 31, 2007, report date, the banking agencies started collecting information on certain assets and liabilities measured at fair value on Call Report Schedule RC–Q, Financial Assets and Liabilities Measured at Fair Value. Schedule RC–Q was intended to be consistent with the disclosure and other requirements contained in FAS 157 and FAS 159. Based on the banking agencies' review of initial industry practice and inquiries from banks, the agencies have determined that industry practice for preparing and reporting FAS 157 disclosures has evolved differently than the process for the information collected on Schedule RC–Q. This divergence has resulted in unnecessary burden and less transparency for the affected banks in two material respects.

First, Schedule RC–Q does not allow banks to separately identify each of the three levels of fair value measurements prescribed by FAS 157. The banking agencies included Level 1 fair value measurements in the total fair value amount in column A of Schedule RC–Q as a means of minimizing reporting burden. However, the omission of a separate column on Schedule RC–Q for Level 1 fair value measurements has increased the time bank managements spend preparing and reviewing Schedule RC–Q because the fair value disclosures on Schedule RC–Q differ from those in the banks' other financial statements. Second, Schedule RC–Q does not allow banks to separately identify any amounts by which the gross fair values of assets and liabilities reported for Level 2 and 3 fair value measurements included in columns B and C have been offset (netted) in the determination of the total fair value reported on the Call Report balance sheet (Schedule RC), which is disclosed in column A of Schedule RC–Q. Based on a review of industry practice, these disclosures are commonly made in the banks' other financial statements.

To reduce confusion related to the differences in industry practice and the Call Report, the banking agencies

propose to add two columns to Schedule RC–Q to allow banks to report any netting adjustments and Level 1 fair value measurements separately in a manner consistent with industry practice. The new columns would be captioned column B, Amounts Netted in the Determination of Total Fair Value Reported on Schedule RC, and column C, Level 1 Fair Value Measurements. Existing column B, Level 2 Fair Value Measurements, and column C, Level 3 Fair Value Measurements, of Schedule RC–Q would be recaptioned as columns D and E, respectively. Column A would remain unchanged.

The banking agencies have also given further consideration to the information that will be necessary to effectively assess the safety and soundness of banks that utilize the fair value option pursuant to FAS 159. Based on this assessment, the banking agencies propose to amend certain other Call Report schedules to improve the agencies' ability to make comparisons among entities that elect a fair value option and those that do not. The primary focus of these proposed changes is to enhance the information provided by banks that elect the fair value option for loans. The proposed changes are based on the principal objectives for disclosures and the required disclosures in FAS 159, which were intended to provide ''information to enable users to understand the differences between fair value and contractual cash flows''' and to provide information ''that would have been disclosed if the fair value option had not been elected.''

Specifically, the banking agencies propose to add items to Schedule RC–C, part I, Loans and Leases, to collect data on the loans reported in this schedule that are measured at fair value under a fair value option: (1) The fair value of such loans measured by major loan category, (2) the unpaid principal balance of such loans by major loan category, and (3) the aggregate amount of the difference between the fair value and the unpaid principal balance of such loans that is attributable (a) to changes in the credit risk of the loan since its origination and (b) to all other factors. Comments are invited on: (1) The availability of information necessary to separately report the aggregate difference between fair value and the unpaid principal that is attributable to changes in credit risk since origination, (2) the reliability of estimating the amount attributable to changes in credit risk since origination, and (3) ways to minimize the burden of collecting information regarding the effect of changes in credit risk on the carrying amount of loans measured at fair value.

Because Schedule RC–C, part I, provides data on loans held for investment and for sale, the banking agencies propose to add the same items to Schedule RC–D, Trading Assets and Liabilities, for loans measured at fair value under a fair value option that are designated as held for trading. The banking agencies also propose to add a new item to Schedule RC–D for ''Other trading liabilities'' in recognition of a bank's ability to elect to measure certain liabilities at fair value in accordance with FAS 159 and designate them as held for trading.

The banking agencies propose to add two items to Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, to collect data on the fair value and unpaid principal balance of loans measured at fair value under a fair value option that are past due or in nonaccrual status. The items would follow the existing three column breakdown on Schedule RC–N that banks utilize to report all other past due and nonaccrual loans. Since trading assets are not currently reported on Schedule RC–N, the banking agencies propose to add similar items to Schedule RC–D to collect the total fair value and unpaid principal balance of loans 90 days or more past due that are classified as trading. Finally, the banking agencies propose to add items to Schedule RI, Income Statement, to collect information on: (1) Net gains (losses) recognized in earnings on assets that are reported at fair value under a fair value option; (2) estimated net gains (losses) on loans attributable to changes in instrument-specific credit risk; (3) net gains (losses) recognized in earnings on liabilities that are reported at fair value under a fair value option; (4) estimated net gains (losses) on liabilities attributable to changes in the instrument-specific credit risk.

3. Other Revisions to the Call Report Information on Trading Assets and Liabilities

Since 2000, the total trading assets reported by banks has increased approximately 124 percent to $682 billion or 7 percent of total industry assets as of March 31, 2007. In terms of concentrations, approximately 64 percent of total trading assets now are either reported in the category of ''Trading assets held in foreign offices'' (approximately 53 percent of total trading assets) or ''Other trading assets in domestic offices'' (approximately 11 percent of total trading assets). Schedule RC–D, Trading Assets and Liabilities, currently does not provide any specific detail on the trading assets held in foreign offices or other trading assets in domestic offices. This limits the banking agencies' ability to assess bank exposures to market, liquidity, credit, operational, and other risks posed by these assets. To appropriately assess the safety and soundness of banks with these exposures and banks with significant concentrations in trading assets, the banking agencies propose three revisions to Schedule RC–D.

First, the banking agencies propose to eliminate the single line item for trading assets in foreign offices on the FFIEC 031 Call Report form and revise the schedule to include separate columns for the consolidated bank and for domestic offices. This will provide detail on the assets in foreign offices in a manner consistent with disclosures about trading assets throughout the bank. Second, the banking agencies propose to change the reporting threshold for Schedule RC–D. At present, a bank must complete Schedule RC–D each quarter during a calendar year if the bank reported a quarterly average for trading assets of $2 million or more in Schedule RC–K, item 7, for any quarter of the preceding calendar year.[5] As proposed, Schedule RC–D would be completed in any quarter when the quarterly average for trading assets was $2 million or more in any of the four preceding quarters.[6] This change will enable the banking agencies to more quickly and readily monitor the composition and risk exposures of the trading accounts of banks that become more significantly involved in trading activities. During 2006, 118 banks reported average trading assets of $2 million or more in any quarter of the year.

Third, the banking agencies propose to require banks with average trading assets of $1 billion or more in any of the four preceding quarters to provide additional detail on trading assets and liabilities currently included in the ''other'' trading asset and liability categories. These banks would provide additional breakouts for asset-backed securities by major category, collateralized debt obligations (both synthetic and non-synthetic), retained

[5] This same reporting threshold applies to Schedule RI, Memorandum item 8, in which banks report a breakdown of trading revenue by risk exposure, but the banking agencies are not proposing to change the threshold for this Memorandum item.

[6] For example, if a bank reported a quarterly average for trading assets of $2 million or more for the first time in its March 31, 2008, Call Report, it would begin to complete Schedule RC–D in its June 30, 2008, Call Report. At present, the bank would not begin to complete Schedule RC–D until its March 31, 2009, Call Report.

interests in securitizations, equity securities (both with and without readily determinable fair values), and loans held pending securitization. In addition, these banks would be required to provide a description of and report the fair value of any type of trading asset or liability in the ''Other trading assets'' and ''Other trading liabilities'' categories that is greater than $25,000 and exceeds 25 percent of the amount reported in that trading category. This threshold is comparable to the threshold that all banks use for providing additional detail on other assets and other liabilities reported in Schedules RC–F and RC–G, respectively.

D. Reporting Credit Derivative Data for Risk-Based Capital Purposes in the Call Report

Approximately 50 banks report that they have entered into credit derivative contracts either as a guarantor or beneficiary. For credit derivative contracts that are covered by the banking agencies' risk-based capital standards, the Call Report instructions require banks to report these credit derivatives in item 52, ''All other off-balance sheet liabilities,'' of Schedule RC–R, Regulatory Capital, unless the credit derivatives represent recourse arrangements or direct credit substitutes, which are reported in one of the preceding items in the Derivatives and Off-Balance Sheet Items section of the schedule. This reporting approach was developed to enable banks that sold credit protection and held the credit derivative to apply a 100 percent risk weight to the notional amount consistent with the risk-based capital treatment of standby letters of credit and guarantees. At present, Schedule RC–R, item 54, ''Derivative contracts,'' specifically excludes credit derivatives and does not include a 100 percent risk weight column because the maximum risk weight on the counterparty credit risk charge for other types of derivatives is 50 percent.

However, this reporting approach does not consider that some credit derivative positions are subject to a counterparty credit risk charge, which is calculated for other derivative positions in item 54, even if the credit derivatives are held by a bank that is subject to the market risk capital rules. The banking agencies also understand that credit derivatives often are included in bilateral netting arrangements. When derivatives are subject to such an arrangement, the instructions to Schedule RC–R, item 54, permit a bank to report a net amount representing its exposure to a counterparty for all derivative transactions under the bilateral netting arrangement with that counterparty. However, by instructing a bank not to report its counterparty credit risk exposure for credit derivatives in Schedule RC–R, item 54, the banking agencies are, in effect, requiring the bank to separate its exposures resulting from credit derivatives from its net exposure to a counterparty. As a consequence, the bank is unable to recognize the netting benefit in its risk-based capital calculation.

The banking agencies are proposing to modify the Call Report instructions for Schedule RC–R to allow the reporting of the credit equivalent amount of credit derivatives subject to the counterparty credit risk charge in item 54 of the schedule. In addition, the banking agencies would extend the existing 100 percent risk weight column in Schedule RC–R to item 54, ''Derivative contracts.''

E. Revision of Reporting Threshold for Other Noninterest Income and Other Noninterest Expense in the Call Report

In 2001, the banking agencies changed the threshold for reporting detail on the components of ''Other noninterest income,'' included in Schedule RI, item 5.l, and ''Other noninterest expense,'' reported in Schedule RI, item 7.d, to require banks separately to disclose on Schedule RI–E, Explanations, the description and amount of any component included in other noninterest income and other noninterest expense that exceeded 1 percent of the sum of interest income and noninterest income. Since that time, the banking agencies have monitored bank disclosures of the types of noninterest income and noninterest expenses in excess of this threshold to assess the safety and soundness considerations associated with the changing sources of these income and expense streams. Based on this review, the banking agencies have determined that the current threshold does not provide sufficient information on the sources of bank noninterest income and noninterest expenses to adequately address their safety and soundness concerns. As a result, the banking agencies are proposing to change the threshold for reporting detail information on the components of other noninterest income and other noninterest expense.

Prior to 2001, banks were required to separately disclose the description and amount of any item included in other noninterest income that exceeded 10 percent of other noninterest income and any item included in other noninterest expense that exceeded 10 percent of other noninterest expense. The banking agencies have determined that thresholds based on a percentage of other noninterest income and other noninterest expense are more relevant criteria for determining when a bank should provide more detail. The banking agencies propose to change the threshold to require banks to separately disclose the description and amount of any item included in other noninterest income that exceeds 3 percent of other noninterest income and any item included in other noninterest expense that exceeds 3 percent of other noninterest expense. This percentage is intended to initially result in a reporting threshold that is comparable to the current 1 percent of interest income plus noninterest income threshold. It is also expected to provide more relevant disclosures than the current threshold as the amounts reported in noninterest income and noninterest expense change over time.

In addition, based on a review of recent bank disclosures of components of other noninterest income and other noninterest expense reported in Schedule RI–E, the banking agencies plan to add one new preprinted caption for other noninterest income and four new preprinted captions for other noninterest expense to help banks comply with the disclosure requirements. As with the existing preprinted captions for other noninterest income and other noninterest expense, banks are only required to use these descriptions and provide the amounts for these components when the amounts included in other noninterest income or other noninterest expense exceed the reporting threshold. The new preprinted other noninterest income caption is bank card/credit card interchange fees. The new preprinted noninterest expense captions are: (1) Accounting and auditing expenses, (2) consulting and advisory expenses, (3) automated teller machine (ATM) and interchange expenses, and (4) telecommunications expenses.

F. Reporting Brokered Time Deposits Participated Out by the Broker in the Call Report

The banking agencies revised the instructions for Schedule RC–E, Memorandum items 2.b, ''Total time deposits of less than $100,000,'' and 2.c, ''Total time deposits of $100,000 or more,'' in March 2007. This was done so that brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000 would be reported in the former rather than the latter Memorandum item. However, the

banking agencies did not make a conforming instructional revision to Schedule RC–E, Memorandum items 1.c.(1) and 1.c.(2), on fully insured brokered deposits. This means that these participated brokered time deposits continue to be reported as brokered deposits of greater than $100,000 rather than brokered deposits of less than $100,000. Consistent reporting of these brokered time deposits across these Schedule RC–E Memorandum items is needed for purposes of measuring a bank's non-core liabilities. Therefore, the banking agencies are proposing to revise Schedule RC–E, Memorandum items 1.c.(1) and 1.c.(2), so that brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000 are reported in Memorandum item 1.c.(1) as fully insured brokered deposits of less than $100,000.

III. Discontinuance of Mailing of Call Report Forms and Instructions

The banking agencies are planning to discontinue the mailing of report forms and instructions for the FFIEC 031 and FFIEC 041. In March 2006, the banking agencies advised banks that beginning in June 2006 they would no longer mail sample Call Report forms to banks each quarter. At that time, the agencies stated that they planned to mail sample forms to banks only in those quarters when significant revisions are made to the report forms. The banking agencies have continued to mail updates to the Call Report instruction book in those quarters when such updates have been issued. Based on their current practice, the banking agencies' next mailing would take place in March 2008.

The Call Report forms and their instructions are available on the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*) and the FDIC's Web site (*http://www.fdic.gov/regulations/resources/call/index.html*) each quarter before any mailings of the paper forms and instructions are completed. A paper copy of the report forms and instructions can be printed from the Web sites. In addition, banks that use Call Report software generally can print paper copies of blank forms from their software. The banking agencies request comment on this issue.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the Call Report and TFR collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: September 4, 2007.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, September 5, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 31st day of August, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: August 30, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 07–4420 Filed 9–10–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Deferred From the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be deferred from the ''summary agenda'' for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10 a.m. on Tuesday, September 11, 2007, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum and resolution re: Proposed FDIC Liquidation Investment Policy.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: September 6, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–17845 Filed 9–10–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 26, 2007.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. John D. Gross, Pine Bluffs, Wyoming, and Andrea G. Lamons, Fort Collins, Colorado, as co–trustees of the Loraine C. Gross Revocable Trust and the Charles C. Gross, Jr. Revocable Trust; to acquire voting shares of Commercial Bancorp, and thereby indirectly acquire voting shares of Farmers State Bank, both in Pine Bluffs, Wyoming.

Board of Governors of the Federal Reserve System, September 6, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–17836 Filed 9–10–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 2007.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. Danvers Bancorp, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Danversbank, both of Danvers, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Virginia Financial Group, Inc., Culpeper, Virginia; to merge with FNB Corporation, and thereby indirectly acquire First National Bank, both of Christiansburg, Virginia.

C. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Regent Capital Corporation, to become a bank holding company by acquiring 100 percent of the voting shares of Regent Bancshares, Inc., and Regent Bank and Trust Company, N.A., all of Nowata, Oklahoma.

Board of Governors of the Federal Reserve System, September 6, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–17835 Filed 9–10–07; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Availability; Environmental Assessment and Finding of No Significant Impact, Warroad, MN

ACTION: Notice.

SUMMARY: The General Services Administration (GSA), Public Buildings Service (PBS), is publishing a final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed construction of a new border station, or Land Port of Entry (LPOE), in Warroad, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Wittman, Regional Environmental Quality Advisor, Knowledge Management and Advocacy Branch, Expert Resources Division, US General Services Administration, 230 South Dearborn Street, Chicago, IL 60604, phone: 312–353–6871, or e-mail: *glenn.wittman@gsa.gov*.

SUPPLEMENTARY INFORMATION: The US Border Station at Warroad, Minnesota, is a 24–hour per day LPOE where the Federal government inspects commercial and noncommercial traffic entering the United States from Manitoba, Canada. Approximately 157,000 cars, commercial trucks, and buses cross the border at this station annually. Constructed in 1962, the facility was built to accommodate a staff of two people and a traffic count only a fraction of the current total. Today, the station must accommodate a staff of about 20 to handle the increased traffic volume. The present facility is overcrowded, outdated, and functionally obsolete.

The GSA, at the request of the US Department of Homeland Security, Bureau of Customs and Border Protection, proposes to construct a new, larger, border station facility south of the existing site, which is located about six miles northwest of the city of Warroad, Minnesota, at the US-Canada border. Details of the Proposed Action are described in a National Environmental Policy Act (NEPA) document entitled *Environmental Assessment, Proposed New Border Station, Warroad, Minnesota, Roseau County* (US General Services Administration, August 2007). Comments received during a May 10, 2006, public scoping meeting and subsequent comment period were considered by GSA in this final decision.

This action includes mitigation measures to reduce impacts to wetlands, soils, and site residents as identified in the EA to a level that is less than significant. Mitigation will involve minimizing impacts to the environment by limiting the degree of disturbance from construction activities and by compensating for impacts to wetlands and displaced residents.

Finding

Pursuant to the provision of GSA Order ADM 1095.1F, the PBS NEPA Desk Guide, and the regulations issued by the Council on Environmental Quality (CEQ) (40 CFR parts 1500 to 1508), this notice advises the public of our finding that the action described above will not significantly affect the quality of the human environment.

Basis for Finding

The environmental impacts of constructing and operating the proposed facility were considered in the final EA and FONSI pursuant to the NEPA and the CEQ regulations implementing NEPA. The EA and FONSI are available for review at the Warroad Public Library, 202 Main Street, Warroad, MN 56763. Copies also are being distributed to local, State, and Federal stakeholders as appropriate.

The build alternative will result in temporary construction impacts involving air quality (dust) and noise, minor loss of soil and vegetation, and potential storm water runoff from the site. To mitigate long-term impacts, GSA will implement the measures that are discussed in the EA.

The FONSI will become final thirty (30) days after the publication of this notice provided that no information leading to a contrary finding is received or comes to light during this period.

Dated: September 4, 2007.

James C. Handley,

Regional Administrator, GSA Region 5.

[FR Doc. E7–17875 Filed 9–10–07; 8:45 am]

BILLING CODE 6820–A9–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–07–0398x]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of an Intervention to Increase Colorectal Cancer Screening in Primary Care Clinics-New-National Center for Chronic Disease Prevention and Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Colorectal cancer (CRC) is the third most frequent form of cancer and the second leading cause of cancer-related deaths among both men and women in the United States. Research shows that screening can reduce both the occurrence of colorectal cancer and colorectal cancer deaths. Screening is beneficial for: (1) Detection and removal of precancerous polyps, resulting in patients recovering without progression to a diagnosis of cancer, and (2) early detection of CRC for more effective treatment and improved survival. Regular CRC screening is recommended for people aged 50 years and older. Many screening tests are widely available and screening has been shown to be effective in reducing CRC mortality. Despite this demonstrated effectiveness, CRC screening remains low. Some reasons attributed to the low screening rates include limited public awareness of CRC and the benefits of screening, failure of health care providers to recommend screening to patients, and inefficient surveillance and support systems in many health care settings.

The purpose of this study is to evaluate and understand the effect of a multi-component intervention on CRC screening rates in primary care clinics. The study will also examine the effects of the intervention conditions on behavioral outcomes (e.g., clinician-patient discussions about CRC screening) and on attitudes, beliefs, opinions, and social influence surrounding CRC screening among patients. The target population includes average-risk patients aged 50–80 years, clinicians, and clinic support staff within the primary care clinics in two managed care organizations (MCOs). There are three tasks in this study. In Task 1, 140 primary care clinicians will complete a survey assessing demographics, opinions about preventive services, CRC screening training and practices, satisfaction with CRC screening, and CRC screening beliefs, facilitators, and barriers. The survey will be administered to primary care clinicians post-intervention. In Task 2, 140 clinic support staff will complete a survey assessing demographics, work-related responsibilities, opinions about preventive services, CRC training and practices, satisfaction with CRC screening, and CRC screening beliefs, facilitators and barriers. The survey will be administered to clinic support staff post intervention. In Task 3, clinic patients will complete a survey assessing demographics, health status, receipt of previous CRC screening and other preventive services, knowledge and opinions about CRC and CRC screening, and social support. The survey will be administered to 3307 patients pre-intervention and 3307 patients post-intervention.

There will be no cost to respondents other than their time. The total estimated annualized burden hours are 2352.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Clinicians	140	1	30/60
Clinic Support Staff	140	1	25/60
Patients surveyed only at baseline	2335	1	20/60
Patients surveyed at baseline and follow-up	972	2	20/60
Patients surveyed only at follow-up	2335	1	20/60

Dated: September 5, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–17837 Filed 9–10–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 5, 2007, from 9 a.m. to 5 p.m.

Location: Crown Plaza Rockville, Remington II and III in the Ballroom, 3 Research Ct., Rockville, MD.

Contact Person: Nancy Wynne, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240–276–3284, or FDA Advisory Committee Information Line, 1–800–741–8138 or 301–443–0572 in the Washington, DC area), code 3014512397. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss issues related to possible regulation of interventional mammography and receive input from professional organizations. The committee will also receive updates on recently approved alternative standards. FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 5, 2007. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 11:45 a.m. and between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 27, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 28, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 240–276–8931, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 5, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–17795 Filed 9–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: October 17, 2007, 8:30 a.m. to 5 p.m.; October 18, 2007, 8:30 a.m. to 5 p.m.

Place: Royal Plaza, 1905 Hotel Plaza Boulevard, Lake Buena Vista, Florida 32830, Telephone: (407) 828–2828, Fax: (407) 827–6338.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

In addition, the Council will be holding a public hearing at which migrant farmworkers, community leaders, and providers will have the opportunity to testify before the Council regarding matters that affect the health of migrant farmworkers. The hearing is scheduled for Thursday, October 18 from 9 a.m. to 12 p.m., at the Royal Plaza.

The Council meeting is being held in conjunction with the 20th Annual East Coast Migrant Stream Forum sponsored by the North Carolina Community Health Center Association, which is being held in Lake Buena Vista, Florida, October 18–20, 2007.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Maryland 20857; telephone (301) 594–0367.

Dated: September 4, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–17825 Filed 9–10–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–28121]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0025 and 1625–0058

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding two Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting an extension of their approval for the following two collections of information: (1) 1625–0025, Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148; and (2) 1625–0058, Application for Permit to Transport Municipal and Commercial Waste. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before October 11, 2007.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG–2007–28121] or

OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room W12–140 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to the Facility at (202) 493–2298 or OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b) By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of complete ICRs are available through this docket on the Internet at *http://dms.dot.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine if collections are necessary in the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to DMS must contain the docket number of this request, [USCG 2007–28121]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the October 11, 2007.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov.* They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request [USCG–2007–28121], indicate the specific section of this document or the ICR to which each comment applies, providing a reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30–day comment period required by OIRA. The Coast Guard has published the 60–day notice (72 FR 27832, May 17, 2007) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Carriage of Bulk Solids Requiring Special Handling— 46 CFR part 148.

OMB Control Number: 1625–0025.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels carrying certain bulk solids.

Forms: None.

Abstract: As specified in 46 CFR part 148, the application for a Special Permit allows Coast Guard to determine the manner of safe carriage for unlisted materials. The information required by Dangerous Cargo Manifests and Shipping Papers permit vessel crews and emergency personnel to properly and safely respond to accidents involving hazardous substances. See §§ 148.02–1 and 148.02–3.

Burden Estimate: The estimated burden has decreased from 1,130 hours to 899 hours a year.

2. *Title:* Application For Permit To Transport Municipal And Commercial Waste.

OMB Control Number: 1625–0058.

Type Of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: None.

Abstract: This information collection provides the basis for issuing or denying a permit, required under 33 U.S.C. 2601 and 33 CFR 151.1009, for the transportation of municipal or commercial waste in the coastal waters of the United States.

Burden Estimate: The estimated burden has increased from 69 hours to 116 hours a year.

Dated: September 4, 2007.

D. T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E7–17814 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–29070]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0108

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0108, Standard Numbering System for Undocumented Vessels. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 13, 2007.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG–2007–29070] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (M–30), U.S. Department of Transportation (DOT),West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) By delivery to room W12–140 at the address given in paragraph (1) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Facility at (202) 493–2298.

(4) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov.* They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2007–29070], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://dms.dot.gov* to view comments and documents mentioned in this notice as being available in the docket. Conduct a simple search using the docket number. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Request

Title: Standard Numbering System for Undocumented Vessels.

OMB Control Number: 1625–0108.

Summary: The Standard Numbering System (SNS) collects information on undocumented vessels/owners operating on waters subject to the jurisdiction of the U.S. A vessel is considered undocumented if it has not been issued a certificate under 46 U.S.C chapter 121. Federal, State, and local law enforcement agencies use information from the system for enforcement of boating laws and theft/fraud investigations. Since the September 11, 2001 terrorist attacks on the U.S., the need has increased for identification of undocumented vessels meeting port security and other missions to safeguard the homeland.

Need: Paragraph (a) of 46 U.S.C. 12301 requires undocumented vessels equipped with propulsion machinery of any kind to be numbered in the State where they are principally operated. In 46 U.S.C. 12302(a), Congress authorized the Secretary to prescribe, by regulation, a SNS, directing approval of a State numbering system if it is consistent therewith. Per DHS Delegation No. 0170.1 section 2 (92)(h), the Secretary has delegated his authority under 46 U.S.C. 12301 and 12302 to the Commandant of the Coast Guard. Regulations requiring the numbering of undocumented vessels are in 33 CFR part 173; those applicable to the States for approval of their systems are contained in 33 CFR part 174.

For States not having an approved system, the Federal Government (Coast Guard) must administer the vessel numbering. Currently, all 50 States and 5 Territories have approved numbering systems. In 2006, there were nearly 13 million undocumented vessels registered by the States. The SNS collects information on undocumented vessels/owners. States submit reports

annually to the Coast Guard on the number, size, construction, etc., of vessels they have numbered. This information is used by the Coast Guard in (1) publication of ''Boating Statistics'' reports required by 46 U.S.C. 6102(b), and (2) for allocation of Federal funds to assist States in carrying out the Recreational Boating Safety (RBS) Program established by 46 U.S.C. chapter 131.

On a daily basis, or as warranted, Federal, State, and local law enforcement personnel use SNS information from their system for enforcement of boating laws and for theft/fraud investigations. Additionally, when encountering a vessel suspected of illegal activity, information from the SNS increases officer safety by assisting boarding officers in determining how best to approach a vessel.

Respondents: Owners of all undocumented vessels propelled by machinery are required by Federal law to apply for a number from the issuing authority of the State in which they are to be principally operated. In addition, States may require other vessels, such as sailboats or even canoes and kayaks, to be numbered. Owners may include individuals or households, non-profit organizations, and small businesses (*e.g.*, liveries offering recreational vessels for rental by the public) or other for-profit organizations.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 15,507 hours to 286,458 hours a year.

Dated: September 4, 2007.

D. T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E7–17815 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. CGD08–07–021]

Proposed Bridge Over the Amite River Diversion Canal, Mile 3.37, Near Head of Island, Livingston Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of public hearing.

SUMMARY: The Coast Guard will hold a public hearing to receive comments on the proposed bridge across the Amite River Diversion Canal, mile 3.37, located in Sections 32 and 33, Township 9 South, Range 4 West, near Head of Island, Livingston Parish, Louisiana. The hearing will focus on the issue concerning the vertical clearance of the proposed bridge, which will measure 22.4 feet at Mean High Water, elevation 3.0 feet National Geodetic Vertical Datum (NGVD). Comments regarding impacts that the proposed bridge project may have on navigation of the Amite River Diversion Canal and the environment will be of particular relevance to the Coast Guard's bridge permitting responsibilities.

DATES: This hearing will be held on Thursday, October 11, 2007, from 7 p.m. to 9 p.m. The meeting will close early if all business is finished. Attendees at the hearing who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. Written material and requests to make oral comment must be received by the Bridge Administrator at the address given under **ADDRESSES** on or before October 10, 2007.

ADDRESSES: The hearing will be held at the St. Amant Primary School at 44365 Highway 429, St. Amant, LA. Send written material and requests to make oral comment to Mr. David Frank, Bridge Administrator, Commander (dpb), Eighth Coast Guard District, Hale Boggs Federal Building, 500 Poydras Street, New Orleans, LA 70130.

Commander (dpb) maintains the public docket and comments and material received from the public will become part of docket [CGD08–07–021] and will be available for inspection or copying at the above address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice or the proposed project, call Mr. David Frank, Eighth Coast Guard District, Bridge Administrator, telephone (504) 671–2128.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Amite River Diversion Canal bridge will provide access to the properties of Blind River Properties, Inc. (BRP) for development of additional residential lots. The proposed alternative will use an existing access road, Home Port Drive, to reach the selected site of the proposed bridge, which is located on BRP property including the water bottom of the Amite River Diversion Canal. The proposed bridge location and approaches were selected from other alternatives to minimize damages to the environment, residences, and commercial businesses.

The proposed bridge has a vertical clearance of 22.4 feet at Mean High Water, elevation 3.0 feet NGVD to ensure adequate clearance for all but one vessel currently using this portion of the Amite River Diversion Canal. All other boats moored between the Highway 22 Bridge and the proposed bridge can navigate through the proposed clearance. Any addition to the vertical clearance would require significant wetland impacts from the bridge approaches based on their design criteria. BRP offered a mitigation package to the single vessel owner but this package was refused. The largest commercial tow company using the Amite River Diversion Canal on a routine basis does not object to the proposed bridge. Larger commercial tows have not existed on the Amite River Diversion Canal in almost two decades.

Procedural

All interested parties will have an opportunity to be heard and to present evidence regarding the impacts of the proposed bridge project. Written statements and other exhibits in lieu of, or in addition to, oral statements at the hearing must be submitted to the Bridge Administrator at the address listed under **ADDRESSES** on or before October 10, 2007, to be included in the Public Hearing transcript.

Comments, including names, may be published as part of the Final Environmental Assessment. All submissions will be available for public inspection in their entirety.

Information on Services for Individuals With Disabilities

For information about facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Commander (dpb), Eighth Coast Guard District. Please request these services by contacting the Bridge Administrator at the phone number under **FOR FURTHER INFORMATION CONTACT** or in writing at the address listed under **ADDRESSES**. Any requests for an oral or sign language interpreter must be received as soon as possible.

Dated: September 4, 2007.

Hala Elgaaly,

Chief, Office of Bridge Administration, U.S. Coast Guard.

[FR Doc. E7–17801 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–29095]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, prevention through people, and recreational boating safety strategic planning will meet to discuss issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Saturday, October 20, 2007, from 8 a.m. to 12:30 p.m., and on Monday, October 22, 2007, from 8 a.m. to 3:30 p.m. The Prevention through People Subcommittee will meet on Saturday, October 20, 2007, from 1:30 p.m. to 4:30 p.m. The Recreational Boating Safety Strategic Planning Subcommittee will meet on Sunday, October 21, 2007, from 8 a.m. to 12 p.m. The Boats and Associated Equipment Subcommittee will meet on Sunday, October 21, 2007, from 1 p.m. to 4:30 p.m. These meetings may close early if all business is finished. On Sunday, October 21, 2007, a subcommittee meeting may start earlier if the preceding Subcommittee meeting closed early.

ADDRESSES: NBSAC will meet at the Residence Inn Arlington—Pentagon City, 550 Army Navy Drive, Arlington, VA 22202. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Ludwig, Executive Secretary of NBSAC, Commandant (CG–3PCB–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or the Office of Boating Safety's Web site at *http://www.uscgboating.org/nbsac/nbsac.htm.*

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, Executive Secretary of NBSAC, telephone 202–372–1061, fax 202–372–1932.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC)

(1) Remarks—Mr. James P. Muldoon, NBSAC Chairman;
(2) Chief, Office of Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.
(3) Executive Secretary's report.
(4) Chairman's session.
(5) TSAC Liaison's report.
(6) NAVSAC Liaison's report.
(7) Coast Guard Auxiliary report.
(8) National Association of State Boating Law Administrators report.
(9) Report on upcoming national boating survey.
(10) Prevention Through People Subcommittee report.
(11) Boats and Associated Equipment Subcommittee report.
(12) Recreational Boating Safety Strategic Planning Subcommittee report.

A more detailed agenda can be found at: *http://www.uscgboating.org/nbsac/nbsac.htm,* after October 9, 2007.

Prevention Through People Subcommittee: Discuss current regulatory projects, grants, contracts, and new issues affecting the prevention of boating accidents through outreach and education of boaters.

Boats and Associated Equipment Subcommittee: Discuss current regulatory projects, grants, contracts, and new issues affecting boats and associated equipment.

Recreational Boating Safety Strategic Planning Subcommittee: Discuss current status of the strategic planning process and any new issues or factors that could impact, or contribute to, the development of the strategic plan for the recreational boating safety program.

Procedural

All meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Secretary of your request no later than Monday, October 1, 2007. Written material for distribution at a meeting should reach the Coast Guard no later than Monday, October 8, 2007. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 30 copies to the Executive Director no later than Thursday, October 4, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Secretary of NBSAC as soon as possible.

Dated: August 29, 2007.

Frank J. Sturm,

Captain, U.S. Coast Guard, Director of Inspections and Compliance (Acting).

[FR Doc. E7–17804 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–29046]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of meetings.

SUMMARY: On Tuesday, September 4, 2007, the Coast Guard published its intent to hold meetings of the Towing Safety Advisory Committee. This supplemental notice makes an addition to the previous one.

Agenda of Meetings

The Agenda of Committee Meeting for September 19, 2007 was originally published on Tuesday, September 4 at 72 FR 50687. In addition to addressing the issues listed in that Notice, a working group will meet on Tuesday, September 18 to address a new Task Statement No. 07–02 ''A Review of the Draft Navigation and Vessel Inspection Circular (NVIC) Concerning Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials.'' The working group will make a report to the full Committee on what has been accomplished in their meeting. No final action will be taken on their report at this September 18 working group meeting.

On Wednesday, September 19, the Committee may consider and vote on any recommendations from the working group deliberating the new Task Statement No. 07–02.

Dated: September 4, 2007.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E7–17803 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning communities applying for eligibility in the National Flood Insurance Program (NFIP) by submitting the items listed on the prerequisites for the sale of flood insurance. This form is used by communities enrolling in the NFIP.

SUPPLEMENTARY INFORMATION: The NFIP is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). Pursuant to 44 CFR 59.22, communities must make application for eligibility in the program by submitting the items listed on the prerequisites for the sale of flood insurance. Section 201 of the Flood Disaster Protection Act of 1973 requires all flood prone communities throughout the country to apply for participation one year after their flood prone identification or submit to the prohibition of certain types of Federal and Federally-related financial assistance for use in their floodplains. The information collected on the NFIP Application pertains to two general categories of information. One is simple community contact information such as the name of local officials, address, phone number, etc., which will be used for future contact. The second category of information pertains to demographic characteristics such as the number of structures in the community and the number of structures in the floodplain. This information is used to provide basic background information about the community's risk to flooding.

Collection of Information

Title: Application for Participation in the National Flood Insurance Program.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0004.

Form Number(s): FEMA Form 81–64, Application for Participation in the National Flood Insurance Program.

Abstract: The NFIP provides flood insurance to communities that apply for participation and make a commitment to adopt and enforce land use control measures that are designed to protect development from future flood damages. The application form will enable FEMA to continue to rapidly process new community applications and to thereby more quickly provide flood insurance protection to the residents of the communities. Participation in the NFIP is mandatory in order for flood related presidentially-declared communities to receive Federal disaster assistance.

Affected Public: Federal, State, Local, or Tribal Governments.

Estimated Total Annual Burden Hours: 748.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, worksheet, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (D) = (A×B)	Total annual burden hours (E) = (C×D)
FF 81–64	187	1	4	187	748
Total	187	1	4	187	748

Estimated Cost: The estimated burden hour cost for State officials, using wage rate categories is estimated to be $16,328.00. The Government's labor cost for this collection is estimated to be $9,712 for review and processing information.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before November 13, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact David Stearrett, Chief, Floodplain Management Section at (202) 646–2953 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: August 30, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–17793 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning a State exemption from the requirement to purchase flood insurance with respect to State-owned structures.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Flood Disaster Protection Act of 1973 (the Act) enables the Federal Insurance Administration (FIA) to grant a State having an adequate plan of self-insurance for its State-owned buildings an exemption from the insurance purchase requirements of the Act. In 44 CFR part 75 standards are established with respect to the Federal Insurance Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by FEMA.

Collection of Information

Title: Exemption of State-Owned Properties Under Self-Insurance.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0013.

Form Numbers: None.

Abstract: Application for exemption is made to the Federal Insurance Administration by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation, which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceed the standards set forth in 44 CFR 75.11.

Affected Public: State, Local, or Tribal Governments.

Estimated Total Annual Burden Hours: 100 hours.

ANNUAL HOUR BURDEN

Data collection activity/instrument	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A×B)	Total annual burden hours (C×D)
Letter of Application	20	1	5	20	100
Total	20	1	5	20	100

Estimated Cost: The estimated burden hour cost to respondents using wage rate categories for State Government managerial positions, per Bureau of Labor Statistics (BLS) is estimated to be $3,090 annually. The cost to the Federal Government for dedicating approximately 80 hours annually, for reviewing and data entry associated with this collection is estimated to be $2,158.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before November 13, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Mary Ann Chang, Insurance Examiner, Federal Insurance Administration, (202) 646–2790 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: August 30, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–17794 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1722–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1722–DR), dated August 30, 2007, and related determinations.

DATES: *Effective Date:* August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 30, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms and flooding during the period of August 7–8, 2007, is of sufficient

severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

If Public Assistance is later requested and warranted, Federal funds provided under that program also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tony Russell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Illinois have been designated as adversely affected by this declared major disaster:

Stephenson and Winnebago Counties for Individual Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17792 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3278–EM]

Minnesota; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Minnesota (FEMA–3278–EM), dated August 21, 2007, and related determinations.

DATES: *Effective Date:* August 21, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 21, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Minnesota resulting from a bridge collapse on August 1, 2007, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Minnesota for the time period beginning on August 1, 2007, and ending on August 15, 2007.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety in the designated areas for the time period noted above. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Minnesota to have been affected adversely by this declared emergency:

Hennepin County for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17788 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3278–EM]

Minnesota; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Minnesota (FEMA–3278–EM), dated August 21, 2007, and related determinations.

DATES: *Effective Date:* August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that assistance under the Stafford Act shall be approved for emergency protective measures (Category B) resulting from the emergency that took place on August 1, 2007, so long as such eligible expenses were incurred during the period beginning on August 1, 2007, and ending on August 25, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17790 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1721–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1721–DR), dated August 29, 2007, and related determinations.

DATES: *Effective Date:* August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 29, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms and flooding during the period of June 11–16, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this declared major disaster:

Arthur, Chase, Dundy, Keith, McPherson, and Perkins for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17787 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1718–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1718–DR), dated August 24, 2007, and related determinations.

DATES: *Effective Date:* August 24, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 24, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, and flooding beginning on August 18, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

If Public Assistance is later requested and warranted, Federal funds provided under

that program also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Blaine, Caddo, and Kingfisher Counties for Individual Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17791 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA Docket ID 2007–0007]

National Response Framework

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the revised National Response Plan now known as the National Response Framework (NRF). The NRF was drafted to build upon the current National Response Plan, incorporate lessons-learned from recent disasters, and to articulate more clearly the roles of the States, tribal, and local jurisdictions and the private sector to guide a successful response to natural disasters or terrorist attacks.

DATES: Comments must be received by October 11, 2007.

ADDRESSES: The NRF is available online in the NRF Resource Center located at *http://www.fema.gov/NRF.* You may also view a hard copy of the NRF at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472. You may submit comments on the NRF, identified by Docket ID FEMA–2007–0007, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID FEMA–2007–0007 in the subject line of the message.

Fax: 866–466–5370.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Andrew Slaten, Acting National Response Framework Branch Chief, Federal Emergency Management Agency, 999 E Street, NW., Washington, DC 20463, 202–646–8152.

SUPPLEMENTARY INFORMATION: The National Response Framework (NRF) builds on the current National Response Plan and, using the comprehensive framework of the National Incident Management System (NIMS), serves as a guide to how the nation conducts all-hazards incident management. By adopting the term ''framework'' within the title, the document is now more in keeping with its intended purpose, specifically, simplifying the language, presentation and content; broadening the focus from a purely Federal plan to one that is national in its focus.

The Department provides the current draft of the NRF for public comment; it does not necessarily reflect the final policy of the Administration.

The NRF explains the common discipline and structures that have been exercised and matured at the local, State and national levels over time. It captures key lessons learned from Hurricanes Katrina and Rita, particularly how the Federal government is organized to support communities and States in catastrophic incidents.

The NRF is applicable to all Federal departments and agencies that may be requested to provide assistance or conduct operations in the context of actual or potential disasters and includes mechanisms for the coordination and implementation of a wide variety of incident management and emergency assistance activities including Federal support to State, local, and tribal authorities; interaction with private-sector organizations; and the coordinated, direct exercise of Federal authorities, when appropriate.

The NRF is written especially for government executives, private-sector leaders and emergency management practitioners. At the same time, it informs emergency management practitioners, explaining the operating structures and tools used routinely by first responders and emergency managers at all levels of government.

FEMA seeks comment on the NRF, which is available online in the NRF Resource Center located at *http://www.fema.gov/NRF.*

Authority: Homeland Security Act of 2002, Public Law 107–296, Homeland Security Presidential Directive–5, Management of Domestic Incidents.

Dated: August 31, 2007.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17974 Filed 9–10–07; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–590, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–590, Registration for Classification as Refugee; OMB Control Number 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 3, 2007, at 72 FR 36475. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 11, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0068 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–590. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.* We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: September 6, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–17826 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO 931 1220 PA]

Proposed Supplementary Rule To Establish Application Fees for Commercial, Competitive, and Organized Group Activity and Event Special Recreation Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Supplementary rule to establish application fees for Special Recreation Permits (SRP) for commercial use, competitive use, and organized group activies and events.

SUMMARY: The Colorado State Office of the Bureau of Land Management (BLM) proposes to establish a supplementary rule addressing Special Recreation Permit (SRP) fees. The proposal would establish standard statewide application fees for issuance of a new SRP or the transfer or renewal of an SRP for commercial use, competitive use, or organized group activities and events. These fees would help offset the cost of processing these SRPs, and also allow field offices to keep more revenues for on-the-ground work, including law enforcement, hiring seasonal employees, and site improvements. Currently, there are no statewide application fees. These new fees will not affect cost recovery charges that begin with the first hour when the 50-hour cost recovery threshold is anticipated to be exceeded. The application fees proposed to go into effect on October 1, 2007, are:

- New Special Recreation Permits—$100
- Renewals (re-issuance of expiring/expired permits)—$50
- Transfers—$100
- Annual operating authorizations—No fee charged

These fees do not apply to SRPs issued to individuals and authorizing use of designated Special Areas.

DATES: You should submit your written comments on the proposed supplementary rule by November 13, 2007. Comments that are received after the close of the comment period or comments delivered to an address other than those listed under **ADDRESSES** need not be considered or included in the Administrative Record for the final supplementary rule.

ADDRESSES:

(1) You may mail comments on the proposed supplementary rules to Jack Placchi, Bureau of Land Management, Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215;

(2) You may hand deliver comments to the Bureau of Land Management Colorado State Office, at the same address.

(3) You may email your comment to *jack_placchi@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Jack Placchi, Outdoor Recreation Planner, Bureau of Land Management, Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215 (303) 239–3832.

SUPPLEMENTARY INFORMATION:

I. Procedures for Submitting Comments

Comments on the proposed supplementary rule should be specific, should be confined to issues pertinent to the proposals, and should explain the reason for any recommended change. Where possible, comments should reference the specific provision of the proposed supplementary rule that is being addressed.

BLM will have all comments, including names and addresses, available for public review at the Colorado State Office in Lakewood during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II . Background

In general, all commercial use, competitive use, organized group activities, special events, and special area use on BLM public lands require a Special Recreation Permit (SRP). BLM Colorado manages over 800 SRPs annually for commercial use, competitive use, and organized group activities and events.

BLM Colorado is proposing to implement new application fees for the issuance of new SRPs and for the transfer and renewal of existing SRPs. The new administrative fees will be $100 for new permits, $50 for renewal, and $100 for transfers. The average cost to existing permit holders will be $10 per year, as most permits are renewed every five years. This fee does not apply to SRPs issued to individuals for special area use.

A statewide application fee will make consistent the cost of applying for and processing SRPs for commercial use, competitive use, or organized group activities and events. Currently Colorado offices have been requiring a $90 minimum use fee for new permit applications. If a permit is not issued, some offices return the funds while others keep the fees to offset the costs of evaluation.

The new fees funds will augment recreation opportunities for the public. Both the public and private outfitters will benefit from the fee through BLM's increased law enforcement capabilities, providing more funds for signing and interpretive education and for a greater BLM staff field presence to control illegal operations on BLM-managed public lands.

Pursuant to 43 CFR 2932.31(d)(1)–(2) and BLM Manual H–2930–1, Recreation Permit Administration at Ch. 1, III. G. 2f(1),the State Director has the authority to set and adjust fees for SRPs, including application fees.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The proposed supplementary rule establishing SRP application fees is not a significant regulatory action under Executive Order 12866. This proposed supplementary rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The proposed supplementary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients; nor does it raise novel legal or policy issues. It imposes minimal fees for the administration and processing of SRP applications.

Fees have not been consistently charged for SRP applications in the past. While this proposal represents a change from the past administration policies, it will not be a major change in the context of the Executive Order. The fees have been discussed with the Colorado Outfitters Association. Additional limited consultation has also occurred with current SRP holders. Information concerning the proposed new fees will be available on the BLM Web site, through press releases, and distributed to current SRP holders.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites comments on how to make this proposed supplementary rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed supplementary rules clearly stated? (2) Does the proposed supplementary rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the supplementary rule be easier to understand if it was divided into more (but shorter) sections? and (5) Is the discussion of the proposed supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rule? If not, how could this material be more helpful in making the proposed supplementary rule easier to understand?

Please send any comments you have on the clarity of the supplementary rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has found that the proposed supplementary rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. This provision of the DM excludes from review under NEPA policies, directives, and regulations that are of an administrative, financial, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case by case. In addition, the proposed rule does not meet any of the 12 criteria for extraordinary circumstances listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in

procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rule and fees will have a minimal effect on outfitter guide business entities. The average cost to existing permit holders will be $10 per year, as most permits are renewed every five years.

To determine an appropriate fee structure, the BLM interviewed BLM SRP managers across Colorado. Those interviewed included recreation permit and license managers of local and regional recreational programs, including Arkansas Headwaters State Recreation Area, Colorado Department of Regulatory Affairs, and Colorado State Parks River Outfitter Licensing Program. The BLM also interviewed the Executive Director of the Colorado Outfitters Association. The proposed fees are a fraction of the cost of comparable application and license fees across the State.

BLM has determined under the RFA that the proposed supplementary rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed supplementary rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). It will not result in an annual effect on the economy of $100 million or more, in a major increase in costs or prices for consumers, individual industries, government agencies or regions, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. It will merely impose reasonable fees for SRP applications to offset costs for processing permits.

Unfunded Mandates Reform Act

The proposed supplementary rule does not impose an unfunded mandate on state, local, or tribal governments, in the aggregate, or the private sector, of more than $100 million per year; nor does the proposed supplementary rule have a significant or unique effect on small governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act at (2 U.S.C. 1532). The proposed rule will impose reasonable fees for SRP applications to offset costs for processing permits. In determining the proposed SRP application fees, the BLM has coordinated with local, state, and Federal agencies.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rule does not have takings implications and is not a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rule would have minimal effect on private lands or property. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed supplementary rule would have minimal effect on state or local government. As for the SRP application fee to be imposed, BLM has coordinated with local, state, and Federal agencies, consulted with managers of local and regional recreational programs, including Arkansas Headwaters State Recreation Area, Colorado Department of Regulatory Affairs, and Colorado State Parks River Outfitter Licensing Program, before proposing the new fees for SRPs. Therefore, in accordance with Executive Order 13132, BLM has determined that the proposed supplementary rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have found that the proposed supplementary rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that the proposed supplementary rule for the BLM Colorado SRP application fee does not include policies that have tribal implications.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with E.O. 13352, BLM has determined that this proposed rule would not impede cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would enhance the ability of the BLM to see that Colorado BLM programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

The proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of the proposed supplementary rule is Jack Placchi, Outdoor Recreation Planner, Colorado State Office, Bureau of Land Management.

IV. Special Recreation Permit (SRP) Application Fees—BLM Colorado Proposed Supplementary Rule

The Colorado State Office, BLM, hereby proposes a supplementary rule to establish application fees for special recreation permits for commercial uses, competitive uses, or organized group activities and events use of BLM lands in Colorado. This supplementary rule is proposed to go into effect on October 1, 2007. The fees schedule will be posted in all Colorado Field and State Offices and on the Internet at *http://www.co.blm.gov.*

The fees for special recreation permit applications are:

- New Special Recreation Permits—$100.
- Renewals (re-issuance of expiring/expired permits)—$50.
- Transfers—$100.
- Annual operating authorizations—No fee charged.

These fees do not apply to SRPs issued to individuals and authorizing use of designated Special Areas.

Authority

The Colorado State Office, Bureau of Land Management, proposes this supplementary rule under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1740, 43 CFR 2932.31(d)(1)–(2), 8365.1–6, and BLM Manual H–2930–1. Enforcement authority for this supplementary rule on the public lands within Colorado is found in FLPMA, 43 U.S.C. 1733, and in 43 CFR 8360.0–7.

Penalties

Under section 303(a) of FLPMA, 43 U.S.C. 1733(a), and 43 CFR 8360.0–7, if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both.

Dated: May 8, 2007.

Sally Wisely,

Colorado State Director.

[FR Doc. E7–17827 Filed 9–10–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Rio Grande and Low Flow Conveyance Channel Between San Acacia Diversion Dam, New Mexico, and the Narrows of Elephant Butte Reservoir, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Reclamation is canceling plans to prepare a final environmental impact statement (EIS) on the environmental impacts of proposed modifications to the main channel of the Rio Grande and Low Flow Conveyance Channel system. The reason for canceling is that seven years have elapsed since publication of the draft EIS and the recently issued final EIS and Record of Decision for the Upper Rio Grande Basin Water Operations Review considers the impacts of continuing the operation of the Low Flow Conveyance Channel as a passive drain with no diversion from the Rio Grande.

FOR FURTHER INFORMATION CONTACT: Lori Robertson, Bureau of Reclamation, Albuquerque Area Office, 55 Broadway NE., Suite 100, Albuquerque, New Mexico 87102; e-mail: *lrobertson@uc.usbr.gov;* telephone (505) 462–3594.

SUPPLEMENTARY INFORMATION: On December 11, 1996, the Bureau of Reclamation published a Notice of Intent to prepare a draft EIS in the **Federal Register**. The draft EIS was filed with the Environmental Protection Agency on September 8, 2000. The purpose of the document was to analyze the environmental impacts of proposed modifications to the main channel for the Rio Grande and Low Flow Conveyance Channel system. The proposed modifications were to be located downstream from San Marcial, New Mexico. The proposed channel system realignment would have allowed for efficient conveyance of water to Elephant Butte Reservoir, effective valley drainage, and effective sediment management. The proposed changes would have also promoted the protection and restoration of the riparian and riverine ecosystem in the project area.

Dated: August 16, 2007.

Dave Sabo,

Acting Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. E7–17838 Filed 9–10–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

Purpose of Information Collection: The forms are for use by the Commission in connection with investigation No. 332–487, Wood Flooring and Hardwood Plywood: Competitive Conditions Affecting the U.S. Industries, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Senate Committee on Finance. The Commission expects to deliver the results of its investigation to the Senate Committee on Finance on June 6, 2008.

Summary of Proposal:

(1) *Number of forms submitted:* Two.

(2) *Title of form:* Wood Flooring and Hardwood Plywood: Competitive Conditions Affecting the U.S. Industries.

(3) *Type of request:* New.

(4) *Frequency of use:* Producer and importer questionnaires, single data gathering, scheduled for 2007.

(5) *Description of respondents:* U.S. firms which produce and/or import wood flooring and hardwood plywood.

(6) *Estimated number of respondents:* 422 (producer and importer questionnaires-total).

(7) *Estimated total number of hours to complete the forms:* 16,880.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from Cynthia B. Foreso (USITC, telephone no. (202) 205–3348) or Gail Burns (USITC, telephone no. (202) 205–2501). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, *Attention*: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: September 4, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–17781 Filed 9–10–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–613]

In the Matter of: Certain 3G Mobile Handsets and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 7, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of InterDigital Communications Corporation of King of Prussia, Pennsylvania and InterDigital Technology Corporation of Wilmington, Delaware. A supplemental letter was filed on August 27, 2007. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain 3G mobile handsets and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,117,004 and 7,190,966. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: David Hollander, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered amended complaint, the U.S. International Trade Commission, on September 5, 2007, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain 3G mobile handsets and components thereof by reason of infringement of one or more of claims 1, 2, 7–10, 14, 15, 21, 22, 24, 30–32, 34, 35, 46, 47, 49, 59, and 60 of U.S. Patent No. 7,117,004, and claims 1, 3, and 6–12 of U.S. Patent No. 7,190,966, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

InterDigital Communications Corporation, 781 Third Avenue, King of Prussia, Pennsylvania 19406.

InterDigital Technology Corporation, Hagley Building, Suite 105, 3411 Silverside Road, Concord Plaza, Wilmington, Delaware 19810.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Nokia Corporation, Keilalahdentie 2–4, P.O. Box 226, FIN–00045 Espoo, Finland.

Nokia Inc., 6000 Connection Drive, Irving, Texas 75039.

(c) The Commission investigative attorney, party to this investigation, is David Hollander, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–R, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a permanent exclusion order or cease and desist order or both directed against a respondent.

Issued: September 5, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–17782 Filed 9–10–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc. (Formerly AAF Association, Inc.)

Notice is hereby given that, on June 22, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing that it has changed its name and made changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

AAF Association, Inc. has changed its name to: Advanced Media Workflow

Association, Inc. In addition, Arbitron, Inc., Columbia, MD; Closed Captioning Service, Inc., Burbank, CA; Convergent Media Labs, Marina del Ray, CA; DG FastChannel, Irving, TX; Digital Laundry, New York, NY; Digital Vision, London, United Kingdom; eBus Limited, Auckland, New Zealand; Filmlight, Harbord, New South Wales, Australia; Harris Corporation, Colorado Springs, CO; National TeleConsultants, Glendale, CA; Protability4Media, Achnasheen, United Kingdom; Pro-Bel, Reading, United Kingdom; SGI Japan, Tokyo, Japan; and TMD Ltd., Aylesbury, United Kingdom have been added as parties to this venture. Also, CANVASs Co. Ltd., Tokyo, Japan; i-Yuno Global, Seoul, Republic of Korea; and Visible World, New York, NY have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 21, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 7, 2007 (72 FR 25780).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4435 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Type Culture Collection

Notice is hereby given that, on August 2, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Type Culture Collection (''ATCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Type Culture Collection, Manassas, VA. The nature and scope of ATCC's standards development activities are: ATCC will develop consensus standards for biomaterials and related processes including their development, identification, authentication, production, storage, distribution and transfer. Biomaterials include, but are not limited to, bacteria, fungi, yeasts, cell lines, toxins, protozoa, viruses and molecular products such as DNA.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4438 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on July 11, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since March 23, 2007, ASME has published several new standards, initiated several new standards activities, and revised several consensus committee charters within the general nature and scope of ASME's standards development activities, as specified in its original notification. More details regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on April 10, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 8, 2007 (72 FR 31855).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4434 Filed 9–10–07; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Systemc Initiative

Notice is hereby given that, on June 21, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CoFlunt Design, Nantes, France; and University Pierre et Marie Curie, Paris, France have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on March 19, 2007. A notice was published in the **Federal Register** pursuant to Section 6(a) of the Act on May 7, 2007 (72 FR 25782).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4432 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on June 15, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bestguide Group Limited, Kowloon, Hong Kong-China; Coresystem Technology Limited, Kowloon, Hong Kong-China; CustomFlix Labs, Inc., Scotts Valley, CA; Dong Kwang Display Co., Ltd., Gyeonggi-Do, Republic of Korea; Estorage Technology Co., Ltd., Taipei, Taiwan; and Tonfunk GmbH Ermsleben, Falkenstein/Harz, Germany have been added as parties to this venture. Also, Taiwan Thick-Film Ind. Corp., Taipei Hsien, TAIWAN has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on March 21, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 8, 2007 (72 FR 31856).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4431 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Glass Technology Development Corporation

Notice is hereby given that, on June 15, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Glass Technology Development Corporation (''FTDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: A O Smith Corporation, Florence, KY; EIC Group North America, Lewisville, TX; Ferro Corporation, Cleveland, OH; Hanson Industries, Lynchburg, VA; Henkel Surface Technologies, Madison Heights, MI; KMI Systems, Inc., Crystal Lake, IL; Mapes and Sprowl Steel, Elk Grove Village, IL; Pemco Corporation, Baltimore, MD; Porcelain Industries, Dickson, TN; Roesch, Inc., Belleville, IL; and URS Corporation, Franklin, TN.

Glass Technology Development Corporation's general area of planned activity is to conduct joint research necessary to develop and demonstrate commercially viable technology for manufacturing products using new porcelain enamel coating technology developed by the United States Government.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4437 Filed 9–10–07; 8:45 am]

BILLING CODE4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on August 7, 2007, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recover of antitrust plaintiffs to actual damages under specified circumstances. Specifically, K12, Inc., Herndon, VA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on June 15, 2007. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 24, 2007 (72 FR 40331).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4439 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production At of 1993—Interactive Advertising Bureau

Notice is hereby given that, on June 5, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interactive Advertising Bureau (''IAB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IAB is currently developing Online Advertising Creative Delivery ''Best Practices'' Guidelines, Insertion Order and eBusiness Standards and Lead Generation Data Delivery ''Best

Practices'' Guidelines, and amending the Ad Unit Guidelines (formerly known as the Half-Page Ad Standard Guidelines) which were listed in the IAB's original notification.

On September 17, 2004, IAB filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61868).

The last notification was filed with the Department on October 6, 2006. a notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 30, 2006 (71 FR 63358).

Patricia A. Brink,

Deputy Director of Operations, Antirust Division.

[FR Doc. 07–4436 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on June 15, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq,* (''the Act''), LiMo Foundation (''LiMo'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, McAfee, Inc., Santa Clara, CA; Celunite, Inc., Sunnyvale, CA; Aplix Corporation, San Francisco, CA; and LG Electronics, Inc., Seoul, Korea, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of this group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 9, 2007 (72 FR 17583).

Patricia A. Brink,

Deputy of Operations, Antitrust Division.

[FR Doc. 07–4430 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Biodiesel Accreditation Commission

Notice is hereby given that, on June 19, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Biodiesel Accreditation Commission (''NBAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NBAC has amended its standard and its program including accompanying documents by making the standard applicable to eligible companies on a worldwide basis except where contraindicated by international law.

On August 27, 2004, NBAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 4, 2004, (69 FR 59269).

The last notification was filed with the Department on January 3, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 25, 2007 (72 FR 3416).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–4433 Filed 9–10–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Public Availability of Revised Fiscal Year 2006 Department of Labor Inventories Under the Federal Activities Inventory Reform Act

AGENCY: Department of Labor.

ACTION: Notice of revised public availability of Department of Labor inventory of activities that are not inherently governmental and of activities that are inherently governmental

SUMMARY: The Federal Activities Inventory Reform (FAIR) Act, Public Law 105–270, requires agencies to develop inventories each year of activities performed by their employees that are not inherently governmental—i.e., inventories of commercial activities. The FAIR Act further requires the Office of Management and Budget (OMB) to review the inventories in consultation with the agencies and publish a notice of public availability in the **Federal Register** after the consultation process is completed. Interested parties who disagree with an agency's initial judgment may challenge the inclusion or the omission of an activity on the list of activities within 30 working days and, if not satisfied with this review, may appeal to a higher level within the agency.

A notice of the first release of the Department of Labor's (DOL's) FY 2006 inventories was published by the OMB in the **Federal Register** on May 2, 2007. See 72 FR 24340–24341. As indicated in OMB's May 2007 notice, the FY 2006 inventory prepared by the DOL was released in connection with the first notice of public availability. However, following the initial release of its inventory, DOL made revisions to its inventory as a result of a challenge by the Nation Council of Field Labor Locals (NCFLL), available pursuant to this notice.

The DOL Office of Competitive Sourcing has made available a summary of the revisions, as well as the complete original and revised FY 2006 inventories, through its Internet site at *http://www.dol.gov/oasam/programs/boc/comp-sourcing/index.htm.* Additionally, the Office of Federal Procurement Policy within the OMB has made available a FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/omb/procurement/fair-index.html.* This User's Guide may help interested parties review DOL's FY 2006 inventories.

Edward C. Hugler,

Deputy Assistant Secretary for Administration and Management.

[FR Doc. E7–17789 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,070]

Block Corporation, American Trouser Division, Tupelo, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 30, 2007 in response to a worker petition filed by a company

official on behalf of workers at Block Corporation, American Trouser Division, Tupelo, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 5th day of September, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17882 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,833]

Chapin Watermatics Incorporated, a Subsidiary of Jain Americas Incorporated, Watertown, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 20, 2007, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on July 30, 2007 and published in the **Federal Register** on August 14, 2007 (72 FR 45451).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Chapin Watermatics Inc. a subsidiary of Jain Americas Inc., Watertown, New York engaged in the production of irrigation systems, such as drip irrigation tape, was denied based on the findings that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner states that there were five workers laid off from the subject firm during the relevant time period.

For companies with a workforce of over fifty workers, a significant proportion of worker separations or threatened separation is five percent. Significant number or proportion of the workers in a firm or appropriate subdivision with a workforce of fewer than 50 workers is at least three workers. In determining whether there were a significant proportion of workers separated or threatened with separations at the subject company during the relevant time period, the Department requested employment figures for the subject firm for 2005, 2006, and January through August, 2007. A careful review of the information provided in the initial investigation revealed that five workers were laid off from the administrative office at the subject firm during the relevant time period. However, overall employment at the subject firm has increased from 2005 to 2006 and from January through August, 2007 when compared with the same period in 2006.

Furthermore, a review of the initial investigation also revealed that the subject company sales and production of drip irrigation tape increased from 2005 to 2006, and also increased during January through June of 2007 when compared with the same period in 2006, and that the subject company did not shift production abroad.

As employment levels, sales and production at the subject facility did not decline in the relevant period, and the subject firm did not shift production to a foreign country, criteria (a)(2)(A)(I.A), (a)(2)(B)(II.A), (a)(2)(A)(I.B), and (a)(2)(B)(II.B) have not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of September, 2007

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17886 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 21, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 21, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 4th day of September 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/27/07 and 8/31/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62044	Foamex (Union)	Eddystone, PA	08/27/07	08/24/07
62045	Tweel Home Furnishings (State)	Newark, NJ	08/27/07	08/23/07
62046	Wallowa Forest Products (State)	Wallowa, OR	08/27/07	08/24/07
62047	Wheatland Tube Company (State)	Collingswood, NJ	08/27/07	08/24/07
62048	Tinnerman Palunt Engineered Products, Inc. (Comp)	Mountainside, NJ	08/27/07	08/24/07
62049	Liberty Fibers Corporation (Comp)	Lowland, TN	08/27/07	08/24/07
62050	GAF Materials Corporation (Wkrs)	Erie, PA	08/28/07	08/27/07
62051	Actown Electrocoil (Comp)	Spring Grove, IL	08/28/07	08/23/07
62052	Freescale Semiconductor, Inc. (Wkrs)	Tempe, AZ	08/28/07	08/24/07
62053	Sunrise Medical Corporation (Comp)	Somerset, PA	08/28/07	08/27/07
62054	MJM Jewelry (Wkrs)	Brooklyn, NY	08/28/07	08/27/07
62055	Siemens Medical—Oncology Care Systems (Comp)	Concord, CA	08/28/07	08/15/07
62056	Glako Smith Kline /Shared Financial Services (Wkrs)	Philadelphia, PA	08/28/07	08/27/07
62057	Bean Lumber Company (State)	Amity, AR	08/28/07	08/27/07
62058	ArvinMeritor (Comp)	Chickasha, OK	08/28/07	08/27/07
62059	Tyco Electronics (M/A-Com) (Wkrs)	Lowell, MA	08/28/07	08/24/07
62060	Spirit Airlines Reservation Center (Wkrs)	Clinton Township, MI	08/29/07	08/23/07
62061	International Legwear Group (Comp)	Hildebran, NC	08/29/07	08/27/07
62062	IPC Information Systems (Wkrs)	Mt. Laurel, NJ	08/29/07	08/22/07
62063	Tubafor Mill, Inc. (UBC)	Morton, WA	08/29/07	08/28/07
62064	Pfizer, Inc. (State)	Portage, MI	08/29/07	08/16/07
62065	Keykert USA (Comp)	Wixom, MI	08/29/07	08/28/07
62066	Magna Donnelly (Comp)	Holland, MI	08/29/07	08/28/07
62067	Crosible, Inc. (Comp)	Moravia, NY	08/30/07	08/27/07
62068	TI Automotive Systems LLC (Comp)	Hebron, OH	08/30/07	08/29/07
62069	Delphi Corporation (Comp)	Flint, MI	08/30/07	08/27/07
62070	Block Corporation (Comp)	Tupelo, MS	08/30/07	08/28/07
62071	Bedford Fair Apparel (State)	Greenwich, CT	08/30/07	08/28/07
62072	Block Corporation (Wkrs)	Columbus, MS	08/30/07	08/29/07
62073	Fujitsu Ten Corp of America (Comp)	Rushville, IN	08/30/07	08/28/07
62074	Playtex Puerto Rico (State)	Vega Baja, PR	08/31/07	08/29/07
62075	Argus—Fremont, Oakland Tribune (Wkrs)	Oakland, CA	08/31/07	08/23/07
62076	Ametek, Inc. (Comp)	West Chicago, IL	08/31/07	08/30/07
62077	CloseMaid (DoAble Products) (Comp)	Diboll, TX	08/31/07	08/30/07
62078	Colgate Palmolive (State)	Guayama, PR	08/31/07	08/29/07
62079	Penn Specialty Chemical (Wkrs)	Memphis, TN	08/31/07	08/30/07
62080	Tri Mas Corporation/Lake Erie Products (Wkrs)	Wood Dale, IL	08/31/07	08/17/07
62081	Meridian Automotive Systems (USW)	Jackson, OH	08/31/07	08/30/07
62082	LexaMar Corporation (Comp)	Boyne City, MI	08/31/07	08/29/07
62083	Chardon Rubber Company (Comp)	St. Joseph, MI	08/31/07	08/30/07

[FR Doc. E7–17883 Filed 9–10–07; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of August 20 through August 31, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the

articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61,933; Haines Service, Lewiston, ME: August 2, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–61,863; GE Ravenna Lamp Plant, Ravenna, OH: July 10, 2006; TA–W–61,928; Seatply, Inc., Jeffersonville, IN: August 1, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

NONE.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

NONE.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,907; Progressive Furniture, Inc., Claremont, NC:

July 30, 2006; TA–W–61,919; Wakefield Thermal Solutions, Inc., Fall River, MA: August 1, 2006;

TA–W–61,943; WestPoint Home, Inc., Bath Products Division, Leased Workers From Ambassador Personal Services, Valley, AL: August 1, 2006;

TA–W–61,955; Horizon Dental Lab, LLC, Rochester, NY: August 1, 2006;

TA–W–61,956; Toledo Commutator, Owosso, MI: October 5, 2006

TA–W–62,039; Hole In None Hosiery Mills, Inc., Burlington, NC: August 22, 2006;

TA–W–61,704; GTECH Corporation, On-Site Leased Workers of Kelly Services, West Greenwich, RI: June 15, 2006;

TA–W–61,704A; GTECH Corporation, On-Site Leased Workers of Kelly Services, Coventry, RI: June 15, 2006;

TA–W–61,755; Troxel Products, LLC, Flexible Flyer Division, West Point, MS: June 25, 2006;

TA–W–61,847; Cedar Ideas, Inc., Oakfield, ME: July 19, 2006

TA–W–61,872; Memphis Hardwood Flooring Company, Grenada, MS: July 12, 2006;

TA–W–61,714; Merrimac Industries, Inc, West Caldwell, NJ: June 7, 2006;

TA–W–61,974; Ford Motor Company, Kentucky Truck Plant, Louisville, KY: August 2, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,663; Black and Decker (U.S.), Inc., McAllen, TX: June 11, 2006;

TA–W–61,717; Burner Systems International, Inc., A Subsidiary of Gas Components Group, Chattanooga, TN: June 20, 2006;

TA–W–61,743; Risdon International, Inc., Watertown, CT: June 22, 2006;

TA–W–61,785; Risdon International, Inc., Middletown, NY: July 3, 2006;

TA–W–61,785A; Risdon International, Inc., Danbury, CT: July 3, 2006;

TA–W–61,830; Charleston Hosiery, Inc., Currently Know As Renfro Charleston, LLC, Fort Payne, AL: April 8, 2007;

TA–W–61,874; Automotive Resources, Inc., Workers at Recon Automotive Remanufacturer, Leased Workers of Randstad, Philadelphia, PA: July 9, 2006;

TA–W–61,883; Pottery Collaborative LLC, Efficiency Staffing Services, Haverhill, MA: July 10, 2006;

TA–W–61,887; AZ Automotive, Working On-Site at General Motors Corp., Roseville, MI: July 24, 2006;

TA–W–61,910; Trico Technologies Corporation, Packaging Department, Brownsville, TX: July 30, 2006;

TA–W–61,926; Wellstone Investors, LLC, Eufaula Staffing, Staffing Solutions, Lakeside I Plant, Eufaula, AL: August 1, 2006;

TA–W–61,926A; Wellstone Investors, LLC, Corporate Office, Manufacturing Support Group, Greenville, SC: August 1, 2006;

TA–W–61,926B; Wellstone Investors, LLC, Gaffney Plant, Manufacturing Support Group, Gaffney, SC: August 1, 2006;

TA–W–61,935; Delta Apparel, Inc., Fayette, AL: August 3,

TA–W–61,953; Eaton Corporation, Filtration Div. Formerly RPA Technologies, Portage, MI: August 6, 2007;

TA–W–61,964; Reed Manufacturing Co., Inc., Tupelo, MS: August 8, 2006;
TA–W–61,964A; Reed Manufacturing Co., Inc., Franklin, TN: August 8, 2006;
TA–W–62,014; Finotex, Woven-Printed Labels Division, Hialeah, FL: August 13, 2006;
TA–W–61,841; Akerue Industries LLC, dba Kay Home Products, On-Site Leased Workers From Tandem Staffing Solutions, Antioch, IL: July 18, 2006;
TA–W–61,869; San Jose Mercury News, Composing Department, San Jose, CA: July 20, 2006;
TA–W–61,882; Spang and Company, Magnetics Div., Customer Service Dept., Pittsburgh, PA: July 16, 2006;
TA–W–61,921; Whaling Manufacturing Co., Inc., Fall River, MA: June 2, 2007;
TA–W–61,923; CHF Industries, Inc., Fall River Division, Fall River, MA: August 1, 2006;
TA–W–61,932; Eaton Corporation, Truck Components, Aftermarket Division TCO, Galesburg, MI: August 3, 2006;
TA–W–61,939; International Tooling LLC, Grand Rapids, MI: August 3, 2006;
TA–W–61,944; Optical Communication Products, Inc., Woodland Hills, CA: August 6, 2006;
TA–W–61,969; Nichols and Stone Company, Gardner, MA: August 8, 2006;
TA–W–62,022; Irwin Industrial Tools, Leased Workers of Work-A-While & Advance Services, Inc., DeWitt, NE: August 21, 2006;
TA–W–62,072; Block Corporation, American Trouser Division, Columbus, MS: August 29, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,831; Commercial Vehicle Group, Global Truck Division, On-Site Leased Workers From Volt Services and Terra, Seattle, WA: July 13, 2006;
TA–W–61,954; Unifi Kinston, LLC, Sub. of Unifi, Polyester Poy Spinning Div. Mundy, etc, Kinston, NC: December 10, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,710; Simkins Industries, Inc., Ridgefield, NJ: June 19, 2006.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–61,933; Haines Service, Lewiston, ME;
TA–W–61,928; Seatply, Inc., Jeffersonville, IN.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–61,863; GE Ravenna Lamp Plant, Ravenna, OH.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

NONE.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

NONE.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,900; Borg Warner, Morse TEC Division, Sallisaw, OK.
TA–W–62,007; VanSeal Corporation, Formerly Know as John Crane, Inc., Vandalia, IL.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,240; Graphic Packaging International, Consumer Products Division, Wausau, WI.
TA–W–61,670; Ferry Cap and Set Screw Company, Cleveland, OH.
TA–W–61,730; Joy Mining Machinery, Inc., Franklin, PA.
TA–W–61,837; St. Paul Metalcraft, Leggett and Platt Aluminum Group, Arden Hills, MN.
TA–W–61,861; De-Sta-Co CPI Products, Inc., Automotive Division, Charlevoix, MI.
TA–W–61,876; Neenah Paper FR, LLC, Urbana, OH.
TA–W–61,958; Philip Morris Products International, LLC, McKenney, VA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–61,767; Outsource Partners International, Inc., Houston, TX.
TA–W–61,877; Family Entertainment, dba Sherwood Forest Family Golf, Conyers, GA.
TA–W–61,918; The Apparel Group, Foxcroft Sportswear Division, Fall River, MA.
TA–W–61,940; Vertex Pharmaceuticals, Inc., Cambridge, MA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

NONE.

I hereby certify that the aforementioned determinations were issued during the period of August 20 through August 31, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons who write to the above address.

Dated: September 5, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–17884 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,049]

Liberty Fibers Corporation; Lowland, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 27, 2007 in response to a petition filed by a company official on behalf of workers of Liberty Fibers Corporation, Lowland, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently,

the investigation under this petition has been terminated.

Signed at Washington, DC, this 4th day of September, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17889 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,721]

Oregon Cutting Systems Group, a Wholly Owned Subsidiary of Blount, Inc.; Warehouse: Clackamas, OR; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated July 25, 2007, a worker requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The negative determination was issued on June 29, 2007. The Department's Notice of determination was published in the **Federal Register** on July 19, 2007 (72 FR 39644). The negative determination was based on the Department's findings that, during the relevant period, workers at the subject facility performed warehousing activities related to the production of chainsaw chains, bars, and sprockets, and that the production that the workers support had shifted to a country that is neither a party to a free trade agreement with the United States nor a beneficiary under either the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act. The negative determination was also based on the Department's findings that following the shift of production abroad, there were no imports and that it is not likely that these articles will be imported.

In the request for reconsideration, the worker alleged that the subject workers did not only support production, but were also engaged in production, and that production shifted to Canada. In support of the allegation, the worker provided a job description that reflected that the workers were engaged in assembly, inspection, and packaging activities.

The Department has carefully reviewed the workers' request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 31st day of August 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17885 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,004]

Schrader Bridgeport, Monroe, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 17, 2007 in response to a worker petition filed by a company official on behalf of workers of Schrader Bridgeport, Monroe, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 31st day of August 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17888 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,866]

STMicroelectronics, Inc., Carrollton, TX; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated August 15, 2007, a company official of STMicroelectronics, Inc. requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on August 1, 2007, and was published in the **Federal Register** on August 14, 2007 (72 FR 45451).

The workers of STMicroelectronics, Inc., Carrollton, Texas were certified eligible to apply for Trade Adjustment Assistance (TAA) on August 1, 2007.

The initial ATAA investigation determined that conditions within the industry are not adverse.

In the request for reconsideration, the petitioner provided sufficient information confirming that employment related to computer and electronic product manufacturing in the state of Texas has declined in the relevant time period and that the employment in semiconductor manufacturing is projected to decrease in the local economy.

Additional investigation has determined that the workers possess skills that are not easily transferable and that the conditions within the industry are adverse. A significant number or proportion of the worker group is age fifty years or over.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following revised determination:

All workers of STMicroelectronics, Inc., Carrollton, Texas, who became totally or partially separated from employment on or after July 23, 2006 through August 1, 2009, are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 5th day of September, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17887 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0030]

Request for Comments on Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Shipyards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its draft document entitled ''Ergonomics for the Prevention of Musculoskeletal

Disorders: Guidelines for Shipyards.'' The draft guidelines are available on OSHA's web page and through its publications office. Interested persons may submit written or electronic comments on the draft guidelines. The Agency may also hold a stakeholder meeting where the public is invited to express its views on the draft guidelines.

DATES: *Written Comments:* You must submit your comments by the following dates:

Regular mail, hand-delivery, express delivery, messenger or courier service: You must submit your comments (postmarked or sent) by November 13, 2007.

Facsimile and electronic transmission: You must submit your comments by November 13, 2007. OSHA is providing the public with 60 days to submit comments on the ergonomics guidelines for shipyards, as was the case with OSHA's ergonomics guidelines for nursing homes, retail grocery stores, and poultry processing.

Stakeholder meeting: Should stakeholders express sufficient interest, OSHA will hold a one-day stakeholder meeting to discuss the draft guidelines. OSHA requests that interested parties submit their requests for a stakeholder meeting through express delivery, hand delivery, messenger service, fax or electronic means by October 11, 2007.

ADDRESSES:

I. Submitting Comments and Requests for a Stakeholder Meeting

You may submit comments and requests for a stakeholder meeting in response to this document as a hardcopy, fax transmission (facsimile), or electronically. The additional materials must clearly identify your submissions by name, date, and docket number, Docket No. OSHA–2007–0030, so OSHA can attach them to your submissions.

(1) *Regular mail, hand-delivery, express delivery, messenger, or courier service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0030, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET. To request a stakeholder meeting, you must submit one copy of your request by express mail, hand delivery, messenger and courier service to the above address.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. Please contact the OSHA Docket Office at: (202) 693–2350 (TTY (877) 899–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

(2) *Facsimile:* If your comments, including any attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. OSHA–2007–0030, in your comments. You may also fax your request for a stakeholder meeting.

(3) *Electronically:* You may submit your comments or request for a stakeholder meeting electronically at: *http://www.regulations.gov*, which is the Federal e-Rulemaking Portal. Information on using the *http://www.regulations.gov* Web site to submit comments, requests for stakeholder meeting and attachments, and to access the docket, is available at the Web site's ''User Tips'' link. You may supplement electronic submissions by uploading document attachments and files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office. Contact the OSHA Docket Office for assistance in using the internet to locate docket submissions.

II. Obtaining Copies of the Draft Guidelines

You can download the draft guidelines for the shipyard industry from OSHA's Web site at *http://www.osha.gov.* A printed copy of the draft guidelines is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Michael Seymour, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Internet Access to Comments

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers, dates of birth, etc. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 899–5627) for information about materials not available through the OSHA Web site and for assistance in using the Web site to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

II. Background

On April 5, 2002, the Department of Labor announced a four-pronged comprehensive approach for addressing musculoskeletal disorders (MSDs), which calls for OSHA to develop industry-or task-specific guidelines. OSHA's fourth industry-specific guidelines address ergonomic concerns in shipyards.

The draft guidelines contain an introduction and two main sections. The introduction provides an overview of MSDs in shipyards and explains the role of ergonomics in reducing the incidence of these injuries. A section entitled ''Process for Protecting Employees'' describes a process for developing and implementing a strategy for identifying ergonomic concerns, implementing ergonomic solutions, training, addressing reports of injuries, and evaluating progress.

The heart of the guidelines, the ''Implementing Solutions'' section, describes examples of ergonomic solutions (engineering solutions, work practices, and personal protective equipment) that may be used in shipyards to control exposure to ergonomics-related risk factors encountered in the industry. The recommendations cover site-wide ergonomics issues, material/equipment handling, power tools, metal work, shipside work, and personal protective equipment. The draft guidelines conclude with a list of references and sources of additional information that shipyards can use to help them with their ergonomic efforts.

OSHA encourages interested parties to comment on all aspects of the draft guidelines. The Agency is particularly interested in:

• Information about successful ergonomic efforts that shipyards have used to address ergonomic concerns,

• innovative solutions that shipyards have used to effectively solve ergonomic problems, and

• checklists or flowcharts that shipyards use to identify workplace problems, identify risk factors, or evaluate aspects of their ergonomics process.

III. Stakeholder Meeting

Should stakeholders express sufficient interest, OSHA will hold a stakeholder meeting following the close of the comment period. The Agency will announce the exact location and date of the stakeholder meeting prior to the close of the comment period.

This notice was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 4th day of September, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–17770 Filed 9–10–07; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Search Committee for LSC Inspector General

TIME AND DATE: The Board of Directors' Search Committee for LSC Inspector General will meet on September 18, 2007 from 9:30 a.m. until conclusion of the Committee's agenda.

LOCATION: Legal Services Corporation headquarters, 3333 K Street, NW., Washington, DC 20007.

STATUS OF MEETING: Closed. The meeting will be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Committee will interview candidates for the position of Inspector General of the Legal Services Corporation and consider the qualifications of these individuals. The Committee will also consider further steps to be taken in connection with the selection and retention of a finalist for the position, and may also consider and act on additional candidates for the position of Inspector General. The closing is authorized by 5 U.S.C. 552b(c)(6) and LSC's corresponding regulation 45 CFR 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered

Closed Session

1. Approval of agenda.
2. Interviews of select candidates for the position of LSC Inspector General.
3. Review and discussion regarding qualifications of interviewed and other viable candidates.
4. Consider and act on further steps to be taken in connection with the selection and retention of a finalist for the position of Inspector General.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. For further information, please contact Patricia Batie, at (202) 295–1500.

Dated: September 7, 2007.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 07–4469 Filed 9–7–07; 12:40 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by November 13, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or sent e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday. You may obtain a copy of the data collection instruction and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the National Science Foundation-National Institutes for Health Bioengineering and Bioinformatics Summer Institutes (BBSI) Program.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of request: Establish an information collection.

Abstract: The National Science Foundation (NSF) and the National Institute of Bioinformatics and Bioengineering (NIBIB), a new component of the National Institutes of Health, established a jointly funded program run by NSF called the Bioengineering and Bioinformatics Summer Institutes (BBSI) Program to begin creating a supply of professionals trained in bioengineering and bioinformatics. This workforce initiative complements research and education efforts in these fields funded by both agencies and constitutes a high profile effort to meet the anticipated human resource needs for bioengineering and bioinformatics.

The program is designed to provide students majoring in the biological sciences, computer sciences, engineering, mathematics, and physical sciences with well planned interdisciplinary experiences in bioengineering or bioinformatics research and education, in very active 'Summer Institutes'; thereby increasing the number of young people considering careers in bioengineering and

bioinformatics at the graduate level and beyond.

NIBIB and NSF's Division of Engineering Education and Centers (EEC) wish to learn whether the BBSI Program as originally conceived is achieving its objectives and program-level outcomes, and to collect lessons learned for improvement of program design and implementation. This short-term evaluation is expected to provide information on what educational and career decisions have been affected by participation in a Summer Institute, what elements of the students' BBSI affect student outcomes, and how the program can be improved, e.g., through changes in specific program-wide design components, expected outcomes, proposal review criteria, etc. The survey data collection will be done on the World Wide Web.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 800.

Estimated Total Annual Burden on REspondents: 400 hours, (800 respondents at 30 minutes per response).

Frequency of Response: Once.

Dated: September 5, 2007.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 07–4444 Filed 9–10–07; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 6, 2007, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. Permits were issued on September 5, 2007 to:

Sam Feola: Permit No. 2008–007.

Rennie S. Holt: Permit No. 2008–008.

Sam Feola: Permit No. 2008–009.

David Caron: Permit No. 2008–010.

Sam Feola: Permit No. 2008–011.

Arthur L. DeVries: Permit No. 2008–012.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–17773 Filed 9–10–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

AGENDA

TIME AND DATE 9:30 am, Tuesday, September 18, 2007.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 5299Y: Most Wanted Transportation Safety Improvements—2007 Progress Report and Update on State Issues.

NEWS MEDIA CONTACT: *Telephone: (202) 314–6100.*

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, September 14, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: September 7, 2007.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07–4470 Filed 9–7–07; 1:22 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Shearon Harris Nuclear Power Plant, Unit 1; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its April 30, 2007, application for proposed amendment to Facility Operating License No. NPF–63 for the Shearon Harris Nuclear Power Plant, Unit No. 1, located in Wake and Chatham Counties, North Carolina.

The proposed amendment would have revised the technical specifications pertaining to the narrow range containment sump water level instruments to allow different water level measurement instruments to be used.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 22, 2007 (72 FR 28720). However, by letter dated July 19, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 30, 2007, and the licensee's letter dated July 19, 2007, which withdrew the application for license amendment.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of August, 2007.

For the Nuclear Regulatory Commission.

Marlayna Vaaler,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–17869 Filed 9–10–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Environmental Assessment and Finding of No Significant Impact for Amendment To Exempt Distribution License No. 20–23904–01E for GE Homeland Protection, Inc., and Request for Exemption From 10 CFC 32.26 Requirements

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Exempt Distribution License No. 20–23904–01E held by GE Homeland Protection, Inc.

(hereafter GE). GE currently possesses Sealed Source and Device (SSD) Certificate No. NR–0399–D–101–E and Exempt Distribution License No. 20–23904–01E that authorizes, under Title 10, Code of Federal Regulations (10 CFR), Section 32.26, ''Gas and aerosol detectors containing byproduct material'' to distribute intact Entryscan explosives/narcotics walk-through detection devices to persons exempt from licensing under 10 CFR 30.20. Issuance of the amendment would allow GE to service the Entryscan devices at customer sites, and to allow GE to ship the Entryscan devices in parts for final assembly at customer sites. Issuance of the amendment would allow GE to be exempt from the requirements of 10 CFR 32.26. GE requested this action by letters dated November 29, 2006 and May 13, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

1.0 Background

The NRC staff has evaluated the environmental impacts of an exemption from the provisions of 10 CFR 32.26 and the amendment to allow GE to service Entryscan explosives/narcotics walk-through detection devices at customer sites, and to allow GE to ship the Entryscan devices in parts for final assembly at customer sites.

The Entryscan devices are walk-through units designed to detect explosives and narcotics. These units are used in-doors at high-security locations, such as airports, seaports, military facilities, and U.S. Customs sites. Each unit has a length of 40.00–56.00 in. (1016.00–1422.40 mm), a width of 57.43–64.00 in. (1458.72–1625.60 mm), and a height of 92.50–102.00 in (2349.50–2590.80 mm). Each unit contains a solid 10 mCi, Ni-63 encapsulated source mounted in a ceramic cell having a wall thickness of 0.39 in. (10 mm). The ceramic cell (detector cell) is mounted inside an aluminum rectangular box (detector housing) having dimensions 7.09 x 2.87 x 2.64 in. (180 x 73 x 67 mm) and a wall thickness of 0.062 in. (1.6 mm); the detector cell and housing together comprise the detector head. The detector head is mounted in the upper cabinet assembly of the unit. GE currently possesses Sealed Source and Device (SSD) Certificate No. NR–0399–D–101–E and Exempt Distribution License No. 20–23904–01E that authorize, under Title 10 of the Code of Federal Regulations (10 CFR), Section 32.26, ''Gas and aerosol detectors containing byproduct material'', GE to distribute intact Entryscan devices to persons exempt from licensing under 10 CFR 30.20.

By letters dated November 29, 2006 and May 13, 2007, GE requested an amendment and exemption to allow GE Field Service Engineers to remove and exchange failed detector heads inside Entryscan units at customer sites, and to allow GE to distribute the Entryscan units in parts for final assembly at the customer sites.

2.0 Proposed Action

The proposed action is to issue an amendment to License No. 20–23904–01E and an exemption from 10 CFR 32.26 to allow GE Field Service Engineers to service Entryscan explosives/narcotics walk-through detection devices at customer sites, and to allow GE to ship the Entryscan devices in parts for final assembly at customer sites. Specifically, the proposed action regarding servicing is to permit GE Field Service Engineers to remove and replace a failed detector head at a customer site, rather than requiring the entire Entryscan unit be returned to a GE distribution facility for repair. The proposed action regarding shipping is to permit GE to ship an Entryscan unit in parts from the GE distribution facility, with the upper cabinet assembly containing the mounted detector head shipped in a separate crate, rather than requiring that the entire Entryscan unit be shipped from the licensed distribution facility as one fully assembled unit.

There are over 300 Entryscan units that are currently deployed, or have the potential to be deployed, throughout all Agreement and Non-Agreement States. GE currently estimates that to replace a failed detector head at the customer site would take approximately one (1) hour in accordance with this exemption. GE would ship a new detector head to the customer site, where a GE Field Service Engineer would perform the replacement. The detector head would not be opened during the servicing; the radioactive sealed source would not be accessed, handled directly, or manipulated in any manner at the customer site. The failed detector head would then be returned to a licensed GE facility for disassembly and repair.

GE would ship the Entryscan units that have been crated in parts. It would take five to seven business days to deliver and install an Entryscan unit in the United States that has been crated in parts for shipment. The detector head would remain mounted and not be removed from the upper cabinet assembly at any time during the shipping and final assembly at the customer site. GE Field Service Engineers would perform the proposed installation and final assembly.

2.1 Need for Proposed Action

Regarding servicing, on occasion, the detector head may fail due to an electrical or mechanical malfunction. The Entryscan unit is not operational when this happens and the impacted security lane at the customer site must be taken out of service until the repairs can be made. This causes interruption to the explosives and narcotics detection capabilities at these locations. In the event of a failed detector head requiring replacement, this exemption would allow GE to ship a replacement sealed detector head directly to the customer site, replace the non-functioning detector head at the customer site, then physically ship the non-functioning detector head back to the GE distribution facility for repair. This would also minimize the Entryscan unit's downtime and the loss of security service at the customer site by allowing GE to return the inoperative unit to service within a few days, as opposed to within ten to fourteen days, which is the case if the entire unit is returned to the manufacturing facility for repair.

Regarding shipment in parts, a fully assembled and crated Entryscan unit weighs up to 875 pounds. A fully assembled Entryscan unit is too large to deliver into most buildings. Its height impacts its ability to fit through a standard loading dock and its width impacts its ability to be moved to a point of use within a building. Additionally, a fully assembled Entryscan unit would pose a significant risk of injury to personnel handling the unit. This exemption would allow delivery of the unassembled unit to the location of use at the customer site.

2.2 Environmental Impacts of Proposed Action

10 CFR 32.26 establishes the requirements for the distribution of gas and aerosol detectors containing byproduct material to persons exempt from licensing under 10 CFR 30.20. Products licensed under 10 CFR 32.26 are required to meet the safety criteria defined under 10 CFR 32.27 to ensure the protection of public health and

safety and the environment under normal and severe use, handling, storage, and disposal of the products. The intact Entryscan unit has been evaluated and licensed under SSD Certificate No. NR–0399–D–101–E and Exempt Distribution License No. 20–23904–01E to meet such criteria. The affected environments would be the immediate vicinity of the Entryscan units and the GE distribution facilities.

Each Entryscan unit contains a solid 10 mCi, Ni–63 encapsulated source mounted into the ceramic detector cell having a wall thickness of 0.39 in. (10 mm). The detector cell is mounted inside the detector housing that has a wall thickness of 0.062 in. (1.6 mm). After assembly during manufacturing, GE leak tests each detector cell for removable contamination. The detector head, comprised of the detector cell and housing, is mounted in the upper cabinet assembly of the unit and is not removable nor accessible to the user. Due to the shielding of the beta-radiation components of the detector cell with ceramic, and the aluminum housing, there is no possibility of contamination on any accessible surface of the detector housing or the external surface of the device. There is a very low probability of a beta particle from Ni–63 penetrating the ceramic detector cell. Additionally, the detector housing passed impact, puncture, pressure, vibration, and temperature prototype testing in accordance with International Standard ISO 2919, ''Radiation protection—sealed radioactive sources—General requirements and classification'' for normal use and likely accident conditions. However, accidents during servicing are not likely. GE Field Service Engineers have been trained to safely and properly handle, install, and secure detector heads during servicing. Through the licensing and SSD evaluation process, GE demonstrated that the Entryscan units meet the safety criteria for licensing under 10 CFR 32.26. The NRC therefore issued GE SSD Certificate No. NR–0399–D–101–E and Exempt Distribution License No. 20–23904–01E that authorizes GE to distribute the Entryscan devices to persons exempt from licensing under 10 CFR 30.20.

The Entryscan units would be serviced and assembled at, or very near, the indoor security checkpoints at the customer sites. During the replacement of the detector head and assembly of a unit, GE would cordon off the unit and place the security checkpoint lane out of service to prevent access to the general public. GE would verify that the work area is secured via cones or barriers before beginning work. Additionally, security staff at customer sites would impose traffic controls to prevent access to the cordoned off area. GE would maintain control of the detector head during servicing and final assembly at the customer site. The detector head would not be opened during the servicing or assembly of the unit; the radioactive sealed source would not be accessed, handled directly, or manipulated in any manner at the customer site. The detector head would not be left unattended during the replacement or assembly of the unit.

One non-radiological impact during the replacement of a detector head at the site may be an electrical hazard; the outer panels of the Entryscan unit may be taken off while the unit is electrically energized. This electrical hazard is minimized by proper use of Lockout-Tagout procedures. A second non-radiological impact during the shipment of the unit in parts and assembling at the customer site may be a risk for bodily injury to personnel assembling the unit at the point of use, although the risk would be lower than that posed if the unit were shipped in one piece. Contracted rigging crews would assist in the assembly of the unit at the customer site under the supervision of GE. A third non-radiological impact may be a risk of electrical shock during assembly. This electrical hazard is also minimized by proper use of Lockout-Tagout procedures. As discussed above, GE and security staff at the customer site would impose proper access restrictions, minimizing the risk to persons around the unit during replacement of a detector head and assembly of a unit. A fourth non-radiological impact may be the effects of security lane closure during servicing and assembly, which may cause delay in the security screening of people; a detector head would be replaced in approximately one hour.

The NRC staff has determined that the proposed action will not impact the quality of water resources because the Entryscan units would be located indoors. The NRC staff has also determined that the proposed request will not impact geology, soils, air quality, demography, biota, and cultural and historic resources under normal and severe handling, storage, use, and disposal. The NRC has determined that the benefits of this exemption exceed the radiological risks and risks of non-radiological impacts.

3.0 Alternatives to Proposed Action

3.1 Alternative 1: License Units Under General License Regulations

The first alternative would be to license the distribution of the Entryscan units under the equivalent Agreement State regulation of 10 CFR 32.51 for Generally Licensed Items, which would allow GE to service the units at customer sites and ship the units in parts.

3.2 Alternative 2: Dispose of Defective Units

A second alternative would be to dispose defective Entryscan units as normal waste as allowed for products distributed under 10 CFR 32.26, rather than repair the units for further use, and to ship the units in one piece.

3.3 Alternative 3: No-Action Alternative

The No-Action Alternative would be the denial of the proposed action. Under this alternative, GE would not be able to replace defective detector heads at customer sites, and would not be able to ship the units under their Exempt Distribution License. GE would therefore need to license the units under General License regulations.

4.0 Environmental Impacts of Alternatives

4.1 Alternative 1: License Units Under General License Regulations

The environmental impacts for the first alternative would be the same as for the proposed action. However, this alternative would increase the administrative and regulatory burden on the licensee, customers, and regulatory authorities. The additional burden would be requiring more frequent reporting by the licensee, requiring the end-users to appoint a person knowledgeable of pertinent regulations, requiring the end-users to leak test the units, and requiring the regulator to track the units.

4.2 Alternative 2: Dispose of Defective Units

The environmental impacts for the second alternative would be an increased level of contamination in the normal waste stream at customer sites, since the Entryscan units would be allowed to be disposed of as regular waste as allowed with exempt household smoke detectors licensed for distribution under 10 CFR 32.26.

4.3 Alternative 3: No-Action Alternative

The environmental impacts for the No-Action Alternative would be the

same as for the first alternative and the proposed action. The burden, however, on the licensee, end-users, and regulators would be greater than that of the proposed action by requiring more frequent reporting by the licensee, requiring the end-users to appoint a person knowledgeable of pertinent regulations, requiring the end-users to leak test the units, and requiring the regulator to track the units.

5.0 Agencies and Persons Contacted

GE has distribution facilities located in Wilmington, MA, Newark, CA, and Lincolnton, NC. NRC contacted the radiation control programs of the States of Massachusetts, California, and North Carolina. These states had no objection to the proposed action in this EA.

NRC staff has determined that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, NRC staff have determined that the proposed action is not the type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

6.0 Conclusion

The action that NRC is considering is to issue an amendment to License No. 20–23904–01E and an exemption from 10 CFR 32.26 to allow GE Field Service Engineers to service Entryscan explosives/narcotics walk-through detection devices at customer sites, and to allow GE to ship the Entryscan devices in parts for final assembly at customer sites. The NRC staff considered the environmental consequences of approving the license amendment and exemption, and has determined that the approval will have no adverse effect on public health and safety or the environment. Therefore, the NRC staff concludes that the proposed action is the preferred alternative, the environmental impacts associated with the proposed action do not warrant denial of the license amendment and exemption request.

7.0 Finding of No Significant Impact

The Commission has prepared this EA related to GE's exemption request. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

8.0 References

1. SSD Certificate No. NR–0399–D–101–E.
2. NRC License No. 20–23904–01E.
3. GE letters dated November 29, 2006 and May 13, 2007, with enclosures thereto.

IV. Further Information

Questions regarding this action may be directed to Duncan White at (301) 415–2598 or by e-mail at *ADW@nrc.gov*.

Dated at Rockville, Maryland this 17th day of August, 2007.

For The Nuclear Regulatory Commission.

Janet Schlueter,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–17878 Filed 9–10–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of September 10, 17, 24, October 1, 8, 15, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 10, 2007

There are no meetings scheduled for the Week of September 10, 2007.

Week of September 17, 2007—Tentative

There are no meetings scheduled for the Week of September 17, 2007.

Week of September 24, 2007—Tentative

There are no meetings scheduled for the Week of September 24, 2007.

Week of October 1, 2007—Tentative

Tuesday, October 2, 2007

9:30 a.m.
Periodic Briefing on Security Issues (Closed—Ex. 1 & 3).

Wednesday, October 3, 2007

2 p.m.
Briefing on NRC's International Programs, Performance, and Plans (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of October 8, 2007—Tentative

There are no meetings scheduled for the Week of October 8, 2007.

Week of October 15, 2007—Tentative

There are no meetings scheduled for the Week of October 15, 2007.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: September 6, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–4468 Filed 9–7–07; 11:33 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a

determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 16, 2007 to August 29, 2007. The last biweekly notice was published on August 28, 2007 (72 FR 49568).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final

determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr@nrc.gov.*

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: June 12, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.4 to add an Action Statement for two inoperable control center air conditioning (AC) subsystems. The proposed new Action Statement would allow a finite time to restore one control center AC subsystem to operable status and require verification that control room temperature remains < 90 °F every 4 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration by a reference to a generic analysis published in the **Federal Register** on December 18, 2006 (71 FR 75774), which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–477 adds an action statement for two inoperable control room subsystems.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes add an action statement for two inoperable control room subsystems.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes add an action statement for two inoperable control room subsystems. The equipment qualification temperature of the control room equipment is not affected. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, test and experiments'', to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes add an action statement for two inoperable control room subsystems. The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal plant operation. The requirements in the TS continue to require maintaining the control room temperature within the design limits.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes add an action statement for two inoperable control room subsystems. Instituting the proposed changes will continue to maintain the control room temperature within design limits. Changes to the Bases or license[e-] controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that the control room temperature will be maintained within design limits.

The proposed changes maintain sufficient controls to preserve the current margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David G. Pettinari, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Acting Branch Chief: Travis L. Tate.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 17, 2007.

Description of amendment request: The proposed changes would modify Technical Specification (TS) requirements related to control room envelope (CRE) habitability in TS 3.7.3, ''Control Room Emergency Ventilation Air Supply (CREVAS) System'' and adds new TS 5.5.14, ''Control Room Envelope Habitability Program.''

These changes were proposed by the industry's TS Task Force (TSTF) and is designated TSTF–448. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible amendments concerning TSTF–448, including a model safety evaluation and model no significant hazards (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022). The licensee affirmed the applicability of the following NSHC determination in its application dated July 17, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 25, 2007.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) by adding an Action statement to the Limiting Condition for Operation (LCO) for TS 3.7.4, Control Room Air Conditioning (AC) System. The new Action statement allows a finite time to restore one control room AC subsystem to operable status (72 hours) and requires verification that control room temperature remains less than 104 °F every 4 hours. The licensing basis control room air temperature for the James A. FitzPatrick Nuclear Power Plant (JAFNPP) is 104 °F.

This change was proposed by the industry's TS Task Force (TSTF) and is designated TSTF–477. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 18, 2006 (71 FR 75774), on possible amendments concerning TSTF–477, including a model safety evaluation and model no significant hazards (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 26, 2007 (72 FR 14143). The licensee affirmed the applicability of the following NSHC determination in its application dated July 25, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Changes Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change as described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–477 adds an action statement for two inoperable control room subsystems.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes add an action statement for two inoperable control room subsystems. The equipment qualification temperature of the control room equipment is not affected. Future changes to the Bases or licensee controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, test and experiments,'' to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in

which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed changes add an action statement for two inoperable control room subsystems. The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal plant operation. The requirements in the TS continue to require maintaining the control room temperature within the design limits.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed changes add an action statement for two inoperable control room subsystems. Instituting the proposed changes will continue to maintain the control room temperature within design limits. Changes to the Bases or license controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that the control room temperature will be maintained within design limits.

The proposed changes maintain sufficient controls to preserve the current margins of safety.

Based on the above, the NRC staff concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: July 2, 2007.

Description of amendment request: The proposed amendment would modify RBS technical specification (TS) requirements for MODE change limitations in limiting condition for operation (LCO) 3.0.4 and surveillance requirement (SR) 3.0.4. The proposed TS changes are consistent with Revision 9 of Nuclear Regulatory Commission (NRC) approved Industry TS Task Force (TSTF) Standard TS Change Traveler, TSTF–359, ''Increase Flexibility in MODE Restraints.'' In addition, the proposed amendment would also change TS section 1.4, Frequency, Example 1.4–1, ''Surveillance Requirements,'' to accurately reflect the changes made by TSTF–359, which is consistent with NRC-approved TSTF–485, Revision 0, ''Correct Example 1.4–1.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), as part of the Consolidated Line Item Improvement Process (CLIIP), on possible amendments to revise the plant-specific TS to modify requirements for MODE change limitations in LCO 3.0.4 and SR 3.0.4.

The NRC staff subsequently issued a notice of availability of the models for Safety Evaluation and No Significant Hazards Consideration Determination for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the CLIIP, including the model No Significant Hazards Consideration Determination, in its application dated February 8, 2007.

The proposed TS changes are consistent with NRC-approved Industry TSTF Standard TS change, TSTF–359, Revision 8, as modified by 68 FR 16579. TSTF–359, Revision 8, was subsequently revised to incorporate the modifications discussed in the April 4, 2003, **Federal Register** notice and other minor changes. TSTF–359, Revision 9, was subsequently submitted to the NRC on April 28, 2003, and was approved by the NRC on May 9, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the NRC staff's analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Changes Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed changes in TS Section 1.4, Frequency, Example 1.4–1, would accurately reflect the changes made by TSTF–359 in LCO 3.0.4 and SR 3.0.4, which are consistent with NRC-approved TSTF–485, Revision 0. These changes are considered administrative in that they modify the example to demonstrate the proper application of LCO 3.0.4 and SR 3.0.4. The requirements of LCO 3.0.4 and SR 3.0.4 are clear and are clearly explained in the associated Bases. As a result, modifying the example will not result in a change in usage of the TS.

The proposed changes in LCO 3.0.4 and SR 3.0.4 allow entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The proposed changes do not adversely affect accident initiators or precursors, the ability of structures, systems, and components to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Being in a TS condition and the associated required actions are not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by these changes. The addition of a requirement to assess and manage the risk introduced by these changes will further minimize possible concerns. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Changes Do Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

No new or different accidents result from utilizing the proposed changes. The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The proposed changes do not alter assumptions made in the safety analysis and are consistent with the safety analysis assumptions and current plant operating practice. Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by these changes will further minimize possible concerns. Thus, these changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Changes Do Not Involve a Significant Reduction in the Margin of Safety

The proposed changes in TS section 1.4, Example 1.4–1, are considered administrative and will have no effect on the application of the TS requirements. Therefore, the margin of safety provided by the TS requirements is unchanged.

The proposed changes in TS LCO 3.0.4 and SR 3.0.4 allow entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The RBS TS allows operation of the plant without the full complement of equipment through the TS conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS LCO condition on the margin of safety is not considered significant. The proposed changes do not alter the required actions or completion times of the TS. The proposed changes allow TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The changes also eliminate current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: July 16, 2007, as supplemented by letter dated August 7, 2007.

Description of amendment request: The proposed amendment would revise the facility operating license (FOL), Paragraph 2.C, and technical specifications (TS) 3.7.2 and TS 5.5.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible amendments to revise the plant-specific TS, to strengthen requirements regarding control room envelope (CRE) habitability by changing the action and surveillance requirements associated with the limiting condition for operability requirements for the CRE emergency ventilation system. A new TS administrative controls program on CRE habitability is being added, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022). The licensee affirmed the applicability of the model NSHC determination in its application dated July 16, 2007, as supplemented by letter dated August 7, 2007.

Basis for proposed NSHC determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design-basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: August 17, 2007.

Description of amendment request: The proposed amendment would revise the date for performing the ''Type A test'' in the RBS technical specification (TS) 5.5.13, ''Primary Containment Leak Rate Testing Program,'' from ''prior to December 14, 2007'' to ''April 14, 2008.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed amendment to TS 5.5.13 allows a one-time extension to the current interval for the ILRT [integrated leak rate test]. The current interval of 15 years 4 months, based on past performance, would be extended on a one-time basis to 15 years and 8 months from the date of the last test. The proposed extension to the ILRT cannot increase the probability of an accident since there are no design or operating changes involved and the test is not an accident initiator. The proposed extension of the test interval does not involve a significant increase in the consequences since analysis has shown that, the proposed extension of the ILRT and DWBT [drywell bypass test] frequency has a minimal impact on plant risk. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed extension to the interval for the ILRT does not involve any design or operational changes that could lead to a new or different kind of accident from any accidents previously evaluated. The tests are not being modified, but are only being performed after a longer interval. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

An evaluation of extending the ILRT DWBT surveillance frequency from once in 10 years to once in 15 years and 8 months has been performed using methodologies based on the approved ILRT methodologies. This evaluation assumed that the DWBT frequency was being adjusted in conjunction with the ILRT frequency. This analysis used realistic, but still conservative, assumptions with regard to developing the frequency of leakage classes associated with the ILRT and DWBT. The results from this conservative analysis indicates that the proposed extension of the ILRT frequency has a minimal impact on plant risk and therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 2, 2007.

Description of amendment request: The proposed changes to the technical specifications (TSs) will add new analytical methods and modify the containment average air temperature and safety injection tank level to support the implementation of Combustion Engineering 16 x 16 Next Generation Fuel (NGF) as defined in Westinghouse Topical Report WCAP–16500-P beginning in Cycle 16 commencing after the spring 2008 refueling outage. The fuel design is intended to provide improved fuel reliability by reducing grid-to-rod fretting issues, improved fuel performance for high duty operation, and enhanced operating margin.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Core Operating Limits Report (COLR)

The proposed changes to the COLR TS are administrative in nature and have no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Changes to the calculated core operating limits may only be made using NRC approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 process.

The proposed change will add the following topical reports to the list of referenced core operating analytical methods.

WCAP–16500–P and Final Safety Evaluation (SE)

Westinghouse topical report WCAP–16500–P describes the methods and models that will be used to evaluate the acceptability of CE 16 x 16 NGF at CE plants. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met. Prior to implementation of NGF the new core design will be analyzed with applicable NRC staff approved codes and methods.

WCAP–12610–P–A and CENPD–404–P–A Addendum 1–A

The proposed change allows the use of methods required for the implementation of Optimized ZIRLOTM clad fuel rods. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

WCAP–16523–P and Final Safety Evaluation

This topical report describes the departure from nucleate boiling correlations that will be used to account for the impact of the CE 16 x 16 NGF fuel assembly design. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met. Prior to implementation of NGF the new core design will be analyzed with applicable NRC staff approved codes and methods.

CENPD–387–P–A

The proposed addition of this topical report provides the departure from nucleate boiling (DNB) correlation that will be used to evaluate the DNB impact of non-mixing vane grid spans for CE 16 x 16 standard and NGF assemblies Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

CENPD–132, Supplement 4–P–A, Addendum 1–P and Final Safety Evaluation

The addendum provides an optional steam cooling model that can be used for Emergency Core Cooling System (ECCS) Performance analyses to support the implementation of the CE 16 x 16 NGF fuel assembly design. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

Assumptions used for accident initiators and/or safety analysis acceptance criteria are not altered by the addition of these topical reports.

Safety Injection Tank Water Level and Containment Average Air Temperature

These values are used as inputs to the LBLOCA and SBLOCA analyses. The new limits ensure that the analyzed LBLOCA remain acceptable. The limits have no impact to the SBLOCA analysis results. The changes do not cause an increase in the probability of an accident or an increase in the dose consequences associated with a LBLOCA.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Core Operating Limits Report (COLR)

The proposed change identifies changes in the codes used to confirm the values of selected cycle-specific reactor physics parameter limits. The proposed change allows the use of methods required for the implementation of CE 16 x 16 NGF. The proposed addition of the referenced topical reports has no impact on any plant configurations or on system performance that

is relied upon to mitigate the consequences of an accident. The change to the COLR is administrative in nature and does not result in a change to the physical plant or to the modes of operation defined in the facility license.

WCAP–16500–P and Final Safety Evaluation

The proposed change adds Westinghouse topical report WCAP–16500–P, which describes the methods and models that will be used to evaluate the acceptability of CE 16 x 16 NGF at CE plants. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met. Prior to implementation of NGF, the new core design will be analyzed with applicable NRC staff approved codes and methods.

WCAP–12610–P–A and CENPD–404–P–A Addendum 1–A

The proposed change allows the use of methods required for the implementation of Optimized ZIRLOTM clad fuel rods. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

WCAP–16523–P and Final Safety Evaluation

This topical report describes the departure from nucleate boiling correlations that will be used to account for the impact of the CE 16 x 16 NGF fuel assembly design. Entergy has demonstrated that the Limitations and Conditions associated with the SE will be met.

CENPD–387–P–A

The proposed addition of this topical report provides the departure from nucleate boiling (DNB) correlation that will be used to evaluate the DNB impact of non-mixing vane grid spans for CE 16 x 16 standard and NGF assemblies. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

CENPD–132, Supplement 4–P–A, Addendum 1–P and Final Safety Evaluation

The addendum provides an optional steam cooling model that can be used for ECCS Performance analyses to support the implementation of the CE 16 x 16 NGF fuel assembly design. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

Safety Injection Tank Water Level and Containment Average Air Temperature

The safety injection tank (SIT) system provides a passive means of adding a large quantity of borated water to the reactor core in the event of a LBLOCA. The SIT system serves no other purpose. Reducing the maximum volume will not create any new or different accidents.

The containment average air temperature ensures that the peak cladding temperature and cladding oxidation remain within limits during a LBLOCA. The change in the minimum allowable containment average temperature does not create any new or different accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Core Operating Limits Report (COLR)

The addition of the following topical reports to the list of analytical methods referenced in the COLR is administrative in nature:

• WCAP–16500–P and Final Safety Evaluation for Westinghouse Electric Company (Westinghouse) Topical Report (TR) WCAP–16500–P, Revision 0, ''CE [Combustion Engineering] 16x16 Next Generation Fuel [(NGF)] Core Reference Report''

• WCAP–12610–P–A and CENPD–404–P–A Addendum 1–A

• WCAP–16523–P and Final Safety Evaluation for Westinghouse Electric Company (Westinghouse) Topical Report (TR), WCAP–16523–P, ''Westinghouse Correlations WSSV and WSSV–T for Predicting Critical Heat Flux in Rod Bundles with Side-Supported Mixing Vanes''

• CENPD–387–P–A

• CENPD–132, Supplement 4–P–A, Addendum 1–P and Final Safety Evaluation for Westinghouse Electric Company (Westinghouse) Topical Report (TR) CENPD–132 Supplement 4–P–A, Addendum 1–P, ''Calculative Methods for the CE [Combustion Engineering] Nuclear Power Large Break LOCA Evaluation Model—Improvement to 1999 Large Break LOCA EM Steam Cooling Model for Less Than 1 in/sec Core Reflood''

Safety Injection Tank Water Level and Containment Average Air Temperature

The change to the allowable range for these two parameters does not reduce a margin of safety. The changes add to the margin of safety and provide assurance that the peak cladding temperature and cladding oxidation remain within limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of amendment request: July 31, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification 5.5.2, ''Primary Coolant Sources Outside Containment,'' to clarify the intent of refueling cycle intervals (i.e., 18 month intervals) with respect to system integrated leak test requirements and to add a statement that the provisions of Surveillance Requirement 3.0.2 are applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment affects only the interval at which integrated system leak tests are performed, not the effectiveness of the integrated system leak test requirements. Revising the integrated system leak test requirements from ''at refueling cycle interval or less'' to ''at least once per 18 months'' is considered to be an administrative change because Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, operate on 18-month fuel cycles. Incorporation of the allowance to extend the 18-month interval by 25%, as allowed by Surveillance Requirement (SR) 3.0.2, does not significantly degrade the reliability that results from performing the Surveillance at its specified Frequency.

Test intervals are not considered as initiators of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased by the proposed amendment. Technical Specification (TS) 5.5.2 continues to require the performance of periodic integrated system leak tests. Therefore, accident analysis assumptions will still be verified. As a result, the consequences of any accident previously evaluated are not significantly increased.

Based on the above discussion, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment affects only the interval at which integrated system leak tests are performed; they do not alter the design

or physical configuration of the plant. No changes are being made to Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, that would introduce any new accident causal mechanisms.

Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not change the design or function of plant equipment. The proposed amendment does not significantly reduce the level of assurance that any plant equipment will be available to perform its function.

The proposed amendment provides operating flexibility without significantly affecting plant operation.

Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: June 18, 2007.

Description of amendment request: The proposed amendments would revise Technical Specification 3.7.5, ''Control Room Area Ventilation Air Conditioning (AC) System,'' to add an Action Statement for two inoperable control room area ventilation AC subsystems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1:—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–477 adds an action statement for two inoperable control room subsystems. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes add an action statement for two inoperable control room subsystems. The equipment qualification temperature of the control room equipment is not affected. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, Test and Experiments,'' to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated. The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures. Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2:—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed changes add an action statement for two inoperable control room subsystems. The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal plant operation. The requirements in the TS continue to require maintaining the control room temperature within the design limits. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3:—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes add an action statement for two inoperable control room subsystems. Instituting the proposed changes will continue to maintain the control room temperature within design limits. Changes to the Bases or license controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that the control room temperature will be maintained within design limits. The proposed changes maintain sufficient controls to preserve the current margins of safety.

Based upon the reasoning above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 27, 2007.

Description of amendment request: The proposed amendment would remove the operability and surveillance requirements for the drywell air temperature and suppression chamber air temperature instrumentation from the Limerick Generating Station (LGS) technical specifications. This will allow a relocation of these requirements to the LGS technical requirements manual, a licensee controlled document.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The failure of the drywell air temperature or suppression chamber air temperature instrumentation is not assumed to be an initiator of any analyzed event in the UFSAR [Updated Final Safety Analysis Report]. The proposed changes do not alter the physical design of this instrumentation or any other plant structure, system, or component. The proposed changes relocate the drywell air temperature and suppression chamber air temperature instrumentation operability and surveillance requirements from the Limerick Generating Station (LGS) Technical Specifications (TS) to a licensee-controlled document under the control of 10 CFR 50.59 [Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.59].

The proposed changes conform to NRC regulatory requirements regarding the content of plant TS as identified in 10 CFR 50.36, and also the guidance as approved by the NRC in NUREG–1433, ''Standard Technical Specifications-General Electric Plants, BWR/4.''

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes relocate the drywell air temperature and suppression chamber air temperature instrumentation operability and surveillance requirements from the LGS TS to a licensee-controlled document under the control of 10 CFR 50.59. The proposed

changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Accordingly, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure, system, or component in the performance of their safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The subject instrumentation does not provide primary information required to permit operators to take specific manually controlled actions for which no automatic control is provided, and that are required for safety systems to accomplish their safety functions for design basis accident events. The instrumentation provides only drywell air temperature indication and suppression chamber air temperature indication, and does not provide an input to any automatic safety function. Operability and surveillance requirements will be established in a licensee-controlled document to ensure the reliability of drywell air temperature and suppression chamber air temperature instrumentation capability. Changes to these requirements will be subject to the controls of 10 CFR 50.59, providing the appropriate level of regulatory control.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

FirstEnergy Nuclear Operating Company, et. al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 12, 2007.

Description of amendment request: The proposed amendment request would make the operating license and technical specification changes necessary to allow an increase in the rated thermal power from 2772 megawatts thermal (MWt) to 2817 MWt (approximately 1.63 percent), based on the use of Caldon, Inc. Leading Edge Flow Meter CheckPlus™ System instrumentation to improve the accuracy of the plant power calorimetric measurement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Under contract to the FirstEnergy Nuclear Operating Company, AREVA NP Inc. performed evaluations of the Davis-Besse Nuclear Power Station (DBNPS) Nuclear Steam Supply System (NSSS) and balance of plant systems, components, and analyses that could be affected by the proposed change to the licensed power level. A power uncertainty calculation was performed and the effect of increasing core thermal power by 1.63 percent to 2817 MWt on the DBNPS design and licensing basis was evaluated. The evaluations determined that all structures, systems and components will continue to be capable of performing their design function at the proposed uprated power level of 2817 MWt. An evaluation of the accident analyses demonstrates that the applicable analysis acceptance criteria continue to be met with the proposed changes. No accident initiators are affected by the power uprate and no challenges to any plant safety barriers are created by any of the proposed changes.

The proposed change to the licensed power level does not affect the release paths, the frequency of release, or the analyzed source term for any accidents previously evaluated in the DBNPS Updated Final Safety Analysis Report (UFSAR). Systems, structures, and components required to mitigate transients will continue to be capable of performing their design functions with the proposed changes, and thus were found acceptable. The reduced uncertainty in the power calorimetric measurement ensures that applicable accident analyses acceptance criteria will continue to be met with operation at the proposed power level of 2817 MWt. Analyses performed to assess the effects of mass and energy remain valid. The source term used to assess radiological consequences has been reviewed and determined to bound operation at the proposed power level.

The proposed change to the RPS high flux setpoint Allowable Value does not alter the typical manner in which systems or components are operated, and, therefore, will not result in an increase in the probability of an accident. The proposed High Flux Trip Allowable Values preserve assumptions of current accident analyses at the higher thermal power allowed by the proposed amendment, irrespective of the source of Heat Balance calculation input data. This proposed change does not alter any assumption previously made in the radiological consequence evaluations, nor does it affect mitigation of the radiological consequences of an accident previously evaluated. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of references to Note 10 to Functional Unit 2, High Flux, in Table 4.3–1 is administrative and does not impact the probability or consequences of an accident previously evaluated because its inclusion does not involve an accident initiator or impact any radiological analyses. This change is made to incorporate NRC guidance in a manner previously determined to be acceptable in DBNPS License Amendment No. 274.

The proposed change to the volume of the condensate storage tanks does not alter the typical manner in which the system or component is operated, and, therefore, will not result in a significant increase in the probability of an accident. The condensate storage tanks are not accident initiators. The proposed change preserves the assumptions previously made in the radiological consequence evaluations and the radiological consequences of accidents previously evaluated. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Core Operating Limits Report (COLR) portion of the Administrative Controls Section of the TS are administrative and do not impact the probability or consequences of an accident previously evaluated because their inclusion do not involve accident initiators or impact any radiological analyses. These changes are made to include the NRC-approved documents pertaining to the Caldon Leading Edge Flow Meter.

In summary, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of any of the proposed changes. Use of the Caldon CheckPlus™ System has been analyzed, and failures of the system will have no adverse effect on any safety-related system or any systems, structures, and components required for transient mitigation. Systems, structures, and components previously required for the mitigation of a transient continue to be capable of fulfilling their intended design functions. The proposed changes have no significant adverse affect on any safety-related structures, systems or components and do not significantly change the performance or integrity of any safety-related system.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at a core power level of 2817 MWt does not create any new accident initiators or precursors. The reduced uncertainty in the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support

operation at the proposed core power level of 2817 MWt. Credible malfunctions continue to be bounded by the current accident analyses of record or recent evaluations that demonstrate that applicable criteria will continue to be met with the proposed changes.

The proposed change to the RPS high flux setpoint Allowable Value does not introduce new accident scenarios, failure mechanisms or single failures. The change does not alter the manner in which plant systems or components are operated. The proposed High Flux Trip Allowable Values preserve assumptions of current accident analyses at the higher thermal power allowed by the proposed amendment, irrespective of the source of Heat Balance calculation input data. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of a reference to Note 10 to Functional Unit 2, High Flux, in Table 4.3–1 is administrative and will not create the possibility of a new or different kind of accident from any accident previously evaluated because its inclusion will not change the manner in which any equipment is operated. The proposed change to the volume of the condensate storage tanks does not introduce new accident scenarios, failure mechanisms or single failures. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the COLR portion of the Administrative Controls Section of the TS are administrative and will not create the possibility of a new or different kind of accident from any accident previously evaluated because their inclusion will not change the manner in which any equipment is operated.

In summary, none of the proposed changes will create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with the power uprate are those pertaining to core thermal power. These include those associated with the fuel cladding, Reactor Coolant System pressure boundary, and containment barriers. An engineering evaluation of the proposed 1.63 percent increase in core thermal power was performed. The power uprate required revised NSSS design thermal and hydraulic parameters to be established to serve as the basis for all of the NSSS analyses and evaluations. This engineering review identified the design modifications necessary to accommodate the revised NSSS design conditions. Evaluations determined that the NSSS systems and components will continue to operate satisfactorily at the uprated power level with these modifications and the proposed changes. The NSSS accident analyses were evaluated at the uprated power level. In all cases, the evaluations demonstrate that the applicable analyses acceptance criteria will continue to be met with approval of the proposed changes. As such, the margins of safety will continue to be bounded by the analyses for all the changes being proposed.

Therefore, none of the proposed changes will involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Russell Gibbs.

Florida Power Corporation, et. al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida

Date of amendment request: April 25, 2007, as supplemented by letter dated June 28, 2007.

Description of amendment request: The proposed amendment would change the operating license and technical specifications to increase the maximum power level from 2568 megawatts thermal (MWt) to 2609 MWt. The approximately 1.6 percent increase in power level would be achieved by use of the Caldon Leading Edge Flowmeter CheckPlus system to accurately measure power level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will increase the maximum core power level from 2568 MWt to 2609 MWt. This increase will only require adjustments and calibrations of existing plant instrumentation and control systems. The only equipment upgrades necessary for this uprate are spool pieces containing multiple ultrasonic flow instruments, which will be installed in each feedwater line, as well as more accurate instrumentation for feedwater pressure and steam pressure and temperature. Indication and control functions will continue to be performed by the currently installed feedwater instrumentation.

Nuclear steam supply systems (NSSS) and balance-of-plant (BOP) systems and components that could be affected by the proposed change have been evaluated using revised NSSS design parameters based on a core power level of 2609 MWt. The results of these evaluations, which used well-defined analysis input assumptions/parameter values and currently approved analytical techniques, indicate that CR–3 systems and components will continue to function within their design parameters and remain capable of performing their required safety functions at 2609 MWt. Since the revised NSSS parameters remain within the design conditions of the Reactor Coolant System (RCS) functional specification, the proposed change will not result in any new design transients or adversely affect the current CR–3 design transient analyses.

The accidents analyzed in Chapter 14 of the CR–3 Final Safety Analysis Report (FSAR) have been reviewed for the impact of the uprate. Based on the power levels assumed in the current safety analyses, it has been determined that all FSAR and supporting analyses bound the uprate. This includes the dose calculations for the design basis radiological accidents, which assume a power level of 2619 MWt (2568 MWt plus an assumed 2 percent measurement uncertainty). Since the proposed change relies on less than 0.4% uncertainty, the assumed power level of 100.4% of 2609 MWt remains 2619 MWt. Therefore, analyses performed at this power remain bounding.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the only equipment upgrades necessary for this uprate are spool pieces containing multiple ultrasonic flow instruments, which will be installed in each feedwater line, as well as more accurate instrumentation for feedwater pressure and steam pressure and temperature. All CR–3 systems and components will continue to function within their design parameters and remain capable of performing their required safety functions. The proposed change does not impact current CR–3 design transients or introduce any new transients. Equipment failure modes are expected to be the same as for existing instruments. Protective and control functions will continue to be performed by the currently installed feedwater instrumentation. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in a margin of safety

Challenges to the fuel, RCS pressure boundary and containment were evaluated for uprate conditions. Core analyses show that the implementation of the power uprate will continue to meet the current nuclear design basis. Impacts to components associated with RCS pressure boundary structural integrity, and factors such as pressure/temperature limits, vessel fluence, and pressurized thermal shock (PTS) were determined to be bounded by current analyses.

As discussed above, all systems will continue to operate within their design parameters and remain capable of performing their intended safety functions following implementation of the proposed change. Finally, the current CR–3 safety analyses, including the design basis radiological accident dose calculations, bound the uprate.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Nine Mile Point Nuclear Station (NMPNS), LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1 (NMP1), Oswego County, New York

Date of amendment request: July 12, 2007.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) requirements related to control room envelope (CRE) habitability in TS 3.4.5, ''Control Room Air Treatment System,'' and TS 6.5, ''Programs and Manuals.'' The proposed changes are consistent with TS Task Force (TSTF) change TSTF–448, Revision 3, ''Control Room Habitability.'' The availability of the TS improvement was published in the **Federal Register** on January 17, 2007 (72 FR 2022) as part of the consolidated line item improvement process. The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the [a] Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nine Mile Point Nuclear Station (NMPNS), LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1 (NMP1), Oswego County, New York

Date of amendment request: July 23, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) section 3.1.1, ''Control Rod System,'' to incorporate a provision that should the rod worth minimizer (RWM) become inoperable before a reactor startup is commenced or before the first 12 control rods have been withdrawn, startup would be allowed to continue. This provision would rely on the RWM function being performed manually and would require a double check of compliance with the control rod program by a second licensed operator or other qualified member of the technical staff. The use of this allowance would be limited to one startup in the last calendar year.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows plant startup to proceed if the RWM becomes inoperable prior to withdrawing the first 12 control rods. The relevant design basis accident is the control rod drop accident (CRDA), which involves multiple failures to initiate the event. This change does not increase the probability of occurrence of any of the failures that are necessary for a CRDA to occur. Use of the RWM or the alternate use of a second qualified individual to ensure the correct control rod withdrawal sequence is not in itself an accident initiator, and adding the new startup allowance does not involve any plant hardware changes or new operator actions that could serve to initiate a CRDA. The proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. Also, since the control rod program will continue to be enforced by either the RWM or verification by a second qualified individual, the initial conditions of the CRDA radiological consequence analysis presented in the Updated Final Safety Analysis Report are not affected. Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any new modes of plant operation and will not result in a change to the design function or operation of any structure, system, or component that is used for accident mitigation. The proposed change allows plant startup to proceed if the RWM becomes inoperable prior to withdrawing the first 12 control rods, with verification of control rod movement in the correct sequence performed by a second qualified individual. This change does not result in any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing basis. This change does not affect the ability of safety-related systems and components to perform their intended safety functions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any [accident] previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows plant startup to proceed if the RWM becomes inoperable prior to withdrawing the first 12 control rods. The proposed change will have no adverse effect on plant operation or equipment important to safety. The relevant design basis accident is the [CRDA], which involves multiple failures to initiate the event. The CRDA analysis consequences and related initial conditions remain unchanged when invoking the proposed change. The plant response to the CRDA will not be affected and the accident mitigation equipment will continue to function as assumed in the accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nine Mile Point Nuclear Station (NMPNS), LLC, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP2), Oswego County, New York

Date of amendment request: July 12, 2007.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) requirements related to control room envelope (CRE) habitability in TS 3.7.2, ''Control Room Envelope Filtration (CREF) System,'' and TS 5.5, ''Programs and Manuals.'' The proposed changes are consistent with TS Task Force (TSTF) change TSTF–448, Revision 3, ''Control Room Habitability.'' The availability of the TS improvement was published in the **Federal Register** on January 17, 2007 (72 FR 2022) as part of the consolidated line item improvement process. The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the [a] Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nine Mile Point Nuclear Station (NMPNS), LLC, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP2), Oswego County, New York

Date of amendment request: July 30, 2007.

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) by changing the testing frequency for drywell spray nozzles specified in TS Surveillance Requirement (SR) 3.6.1.6.3 from ''10 years'' to ''following maintenance that could result in nozzle blockage.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the surveillance requirement (SR) to verify that the drywell spray nozzles are unobstructed after maintenance that could introduce material that could result in nozzle blockage. The spray nozzles are not assumed to be initiators of any previously analyzed

accident. Therefore, the proposed change does not increase the probability of any accident previously evaluated. The spray nozzles are used in the accident analyses to mitigate design basis accidents. The revised SR to verify system operability following maintenance is considered adequate to ensure operability of the Residual Heat Removal (RHR) Drywell Spray System.

Since the system will still be able to perform its accident mitigation function, the consequences of accidents previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the SR to verify that the RHR Drywell Spray System nozzles are unobstructed after maintenance that could result in nozzle blockage. The change does not introduce a new mode of plant operation and does not involve physical modification to the plant. The change will not introduce new accident initiators or impact the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the frequency for performance of the SR to verify that the RHR Drywell Spray System nozzles are unobstructed. The frequency is changed from every 10 years to following maintenance that could result in nozzle blockage. This requirement, along with the foreign material exclusion program, the normal environmental conditions for the system, and the remote physical location of the spray nozzles, provide assurance that the spray nozzles will remain unobstructed. As the spray nozzles are expected to remain unobstructed and able to perform their post-accident mitigation function, plant safety is not significantly affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Rivers, Manitowoc County, Wisconsin

Date of amendment request: June 29, 2007.

Description of amendment request: The proposed amendments would modify the Technical Specifications (TSs) 3.7.2, by removing the specific isolation time for the main steam isolation valves from the associated TS Surveillance Requirements (SRs) and by replacing it with the requirement to verify the valve isolation time is within limits. The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF)–491, ''Removal of the Main Steam and Main Feedwater Valve Isolation Time from Technical Specifications,'' Revision 2. The proposed amendments deviate from TSTF–491 in that the current PBNP TS 3.7.3, and associated SRs do not include the main feedwater valve closure times, and thus TSTF–491 changes to TS 3.7.3 are not applicable to the PBNP TSs.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on October 5, 2006 (71 FR 58884), on possible amendments concerning the Consolidated Line Item Improvement Process (CLIIP), including a model safety evaluation and a model no significant hazards consideration determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on December 29, 2006 (71 FR 78472) as part of the CLIIP. In its application dated June 29, 2007, the licensee affirmed the applicability of the following determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows relocating main steam [ ] valve isolation times to the Licensee Controlled Document that is referenced in the Bases. The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–491 related to relocating the main steam [ ] valve isolation times to the Licensee Controlled Document that is referenced in the Bases and replacing the isolation time with the ph[r]ase, ''within limits.''

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes relocate the main steam [ ] isolation valve times to the Licensee Controlled Document that is referenced in the Bases. The requirements to perform the testing of these isolation valves are retained in the TS. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, test and experiments,'' to ensure that such changes do not result in more than minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed changes relocate the main steam [ ] valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the ph[r]ase ''within limits.'' The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal p[l]ant operation. The requirements in the TS continue to require testing of the main steam [ ] isolation valves to ensure the proper functioning of these isolation valves.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes relocate the main steam [ ] valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the ph[r]ase ''within limits.'' Instituting the proposed changes will continue to ensure the testing of main steam [ ] isolation valves. Changes to the Bases or license controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that main steam [ ] isolation valve testing is

conducted such that there is no significant reduction in the margin of safety.

The margin of safety provided by the isolation valves is unaffected by the proposed changes since there continue to be TS requirements to ensure the testing of main steam [ ] isolation valves. The proposed changes maintain sufficient controls to preserve the current margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Travis L. Tate.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 15, 2007.

Description of amendment request: The proposed amendment would revise the licensing basis, as described in Appendix 3A of the Salem Updated Final Safety Analysis Report (UFSAR), regarding the method of calculating the net positive suction head available (NPSHa) for the emergency core cooling system (ECCS) and containment heat removal system pumps. The proposed change relates to issues associated with Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change in NPSH methodology for ECCS pumps allows the use of initial containment air pressure in calculating NPSHa. Although this change is a non-conservative change in the Salem methodology for calculation of RHR [residual heat removal] pump NPSHa during post LOCA [loss-of-coolant accident] recirculation (per 10 CFR 50.59(c)(1)(viii) [Title 10 of the Code of Federal Regulations, Part 50, Section 50.59(c)(1)(viii)]), the proposed new methodology is in accordance with NPSHa calculation methodologies provided in Safety Guide 1, Regulatory Guides [RG] 1.1, and 1.82, and the guidance of NEI [Nuclear Energy Institute] 04–07, [''Pressurized Water Reactor Sump Performance Evaluation Methodology[,''] (GSI [generic safety issue]—191) and accompanying SER [safety evaluation report]. The containment air pressure value used in the NPSHa calculation is based on the containment conditions prior to the accident only and does not include any credit for accident pressure conditions, is conservatively determined based on minimum containment initial pressure, and maximum temperature and relative humidity conditions. In addition, the vapor pressure term for the sump water being pumped is also included in the NPSHa equation, and the value chosen for the NPSHa calculation is based on the highest temperature of the sump fluid for the condition being evaluated. This, in conjunction with the more rigorous GSI–191 analyses, provides assurance that the ECCS pumps can perform their design function. Consequently, the ECCS pumps will continue to perform their design function and there is no significant increase in the probability or consequences of an accident previously evaluated[.]

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The ECCS pumps take suction from the containment sump during the recirculation phase of the LOCA to provide long term core cooling. This system is not utilized during normal operation of the plant. Therefore, it does not cause initiation of any accident.

However, the ECCS pumps will continue to perform their design function during the recirculation phase. Crediting initial containment air pressure in the NPSH methodology does not create any new or different kind of accident from any accident previously evaluated. This change removes an additional conservatism built into the original methodology. By changing the UFSAR described methodology to credit the containment initial air pressure in the RHR pump NPSHa calculation, a more realistic methodology is established. The sole purpose of the additional conservatism was to ensure credit was not taken for post-LOCA pressure. The revised methodology continues to meet this requirement.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change removes conservatism from the existing UFSAR methodology. However, the purpose of the conservatism (equating containment pressure to sump vapor pressure) was solely to ensure that no credit was taken for transient (post-LOCA) pressure in the NPSHa calculation. The purpose was not to deny credit for initial containment air pressure. Consequently, removing the conservatism does not alter the basic intent of the NPSH methodology per RG 1.1 requirements, and is consistent with the requirements of RG 1.82, Revision 1 and NEI 04–07. This change to include a containment air pressure value establishes a more realistic methodology that still encompasses adequate conservatisms; no credit is given for the higher accident pressure conditions, and the value is conservatively determined based on minimum initial containment air pressure and maximum temperature and relative humidity conditions. In addition, the vapor pressure term for the sump water being pumped is also added to the NPSHa equation, and the value chosen for the NPSHa calculation is based on the highest temperature of the sump fluid for the condition being evaluated. Consequently, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: August 20, 2007.

Description of amendment request: The amendment would increase the minimum volume of fuel required for the emergency diesel generators (EDGs) in Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the minimum required fuel oil volume required in the EDG storage tanks have no impact on the frequency of occurrence of any of the accidents evaluated in the FSAR [Final Safety Analysis Report for Callaway]. Changing the minimum required fuel oil volume in the EDG fuel oil storage tank has no impact on the likelihood of occurrence of a loss of coolant accident (LOCA), line break, plant transient, loss of offsite power, or any such accident because the precursors for such accidents do not involve the fuel oil storage tanks.

The EDGs are designed to provide [alternating current] electrical power to systems required for mitigating the effects of accidents in the event of a loss of the

preferred (offsite) power source (i.e., from the grid). However, the failure or malfunction of an EDG (due, for example, to a loss or interruption of [the] fuel oil supply) is not itself an initiator of any accident previously evaluated.

Based on these considerations, the proposed changes have no impact on the probability of occurrence of any accident evaluated in the FSAR, and therefore the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

With respect to the consequences of postulated accidents addressed in [the] FSAR, the support function provided by the EDGs for accident mitigation is not affected by the proposed TS changes. [The proposed changes are to provide additional margin for precluding adverse effects that could result from air entrapment caused by a vortex condition during fuel oil transfer pump operation and, thus, to ensure that the EDG has sufficient fuel oil to provide its support function when needed.] Each of the diesel fuel oil storage tanks has adequate excess capacity to more than accommodate a slight increase in the usable volume of fuel oil contained therein. Thus, even with this increase, the tanks will still be fully capable of storing the required fuel oil volume needed to ensure EDG operation throughout the assumed duration of an accident. At the same time, the proposed changes to TS 3.8.3 will serve to ensure that the unusable volume in the tanks provides adequate margin against potentially adverse vortex effects (by precluding the potential for air ingestion into the fuel oil transfer pumps). On this basis, the proposed changes have no impact on the capability of the EDGs to perform their required mitigation/support function for accidents involving a loss of offsite power. Since the proposed changes have no impact on accident mitigation capability, they involve no increase in the consequences of any accident evaluated in the FSAR.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve a slight change to the minimum fuel oil volume required for the EDGs, but they do not involve hardware changes or changes to EDG operation or testing that would create any new failure modes for the EDGs or any other [safety-related] system or component, or that would adversely affect plant operation. The changes do not involve the addition of any new equipment. No changes to accident assumptions, including any new limiting single failures, are involved. With respect to the proposed changes, the plant will continue to be operated within the envelope of the existing safety analyses.

Therefore, based on the above, the proposed changes do not create [the possibility of] a new or different kind of accident [from any accident] previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes do not directly affect these barriers, nor do they involve or cause any adverse impact on the EDGs which serve to support these barriers in the event of an accident concurrent with a loss of offsite power.

[The margin of safety is also related to the ability of the safety-related systems to perform their safety function as described in the safety analyses in the FSAR. The proposed changes are to provide additional margin for precluding adverse effects that could result from air entrapment caused by a vortex condition during fuel oil transfer pump operation and, thus, to ensure that the EDG has sufficient fuel oil to provide its support function when needed. Therefore, the proposed changes are to increase margin for the EDGs.]

The proposed changes do not alter the manner in which safety limits or limiting safety system settings are determined, nor is [the] basis of any limiting condition for operation changed or affected. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92© are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Thomas G. Hiltz.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 1, 2007.

Brief description of amendment: The amendment revised the Grand Gulf Nuclear Station, Unit 1 (GGNS) Technical Specification (TS) to add a note to the Required Actions of TS 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs)''. GGNS TS 3.6.1.3 requires specific actions to be taken for inoperable PCIVs. The TS Required Actions include isolating the affected penetration by use of a closed and deactivated automatic valve, closed manual valve, blind flange, or check valve with flow through the valve secured. The new note would allow a relief valve to be used to comply with

TS 3.6.1.3, Actions A.1 and B.1 without being deactivated provided it has a relief setpoint of at least 1.5 times containment design pressure (i.e., at least 23 pounds per square inch gauge) and meets one of the following criteria:

1. The relief valve is one-inch nominal size or less, or

2. The flow path is into a closed system whose piping pressure rating exceeds the containment design pressure rating.

Date of issuance: August 24, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No: 176.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: April 24, 2007 (72 FR 20382).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Date of application for amendment: September 25, 2006, as supplemented March 12, 2007.

Brief description of amendment: Entergy Nuclear Operations, Inc., requested an amendment to make editorial changes to the Technical Specifications of Indian Point Nuclear Generating Unit Nos. 2 and 3. The editorial changes consist of typographical corrections, update of references, and deletion of obsolete notes.

Date of issuance: August 16, 2007.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 252 and 234.

Facility Operating License Nos. DPR–26 and DPR–64: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 7, 2006 (71 FR 65142).

The March 12, 2007, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 2007.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 7, 2006, as supplemented by letters dated January 22, May 14, and August 7, 2007.

Description of amendment request: The amendment revises the Seabrook Technical Specifications (TSs) to correct a joint-owner name in the operating license, remove a license condition from Appendix C to the FOL, and remove the list of Bases sections from the TS Index. Additionally, the amendment removes two manual valves from TS table 3.3–9, ''Remote Shutdown System,'' adds the requirement that only one charging pump is permitted to be aligned for injection into the reactor coolant system in Modes 4, 5, and 6, removes a 1-hour reporting requirement for portable makeup pump system storage from TS 3.7.4, ''Service Water System/Ultimate Heat Sink,'' deletes a footnote from TS 3.7.6.2, ''Air Conditioning,'' and modifies TS 6.7.6, ''Radioactive Effluent Controls Program.''

Date of issuance: August 23, 2007.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 116.

Facility Operating License No. NPF 86: The amendment revised the License and Technical Specification.

Date of initial notice in ***Federal Register:*** June 5, 2007 (72 FR 31101).

The licensee's January 22, May 14, and August 7, 2007, supplements provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 2007.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: August 14, 2006, as supplemented by letter dated July 16, 2007.

Brief description of amendments: The amendments make miscellaneous improvements to the Technical Specifications (TSs) for Prairie Island Nuclear Generating Plant, Units 1 and 2. The amendments revise the wording in the section headers in TS 1.3, ''Completion Times''; remove an unnecessary Note in TS 3.1.4, ''Rod Group Alignment Limits''; remove applicable modes in TS 3.3.7, ''Spent Fuel Pool Special Ventilation System (SFPSVS) Actuation Instrumentation''; add reference to a TS Condition to clarify the requirements of TS 3.7.10, ''Control Room Special Ventilation System (CRSVS)''; and update a reference in TS 4.0, ''Design Features.''

Date of issuance: August 10, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 180 & 170.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** November 21, 2006 (71 FR 67397).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 2007.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 26, 2006, as supplemented on May 14, 2007.

Brief description of amendments: The amendments revise Technical Specification (TS) 6.9.1.9, ''Core Operating Limits Report (COLR),'' to remove the revision numbers and dates from the list of topical reports that contain the analytical methods used in the COLR. The Salem Unit 2 amendment also adds a new topical report to the list of COLR methods referenced in TS 6.9.1.9.

Date of issuance: August 23, 2007.

Effective date: The license amendments are effective as of the date of issuance. The Salem Unit 1 amendment shall be implemented prior to restart from the 19th refueling outage in fall 2008. The Salem Unit 2 amendment shall be implemented prior to restart from the 16th refueling outage in spring 2008.

Amendment Nos.: 284 and 267.

Facility Operating License Nos. DPR 70 and DPR–75: The amendments revised the TSs and the License.

Date of initial notice in ***Federal Register:*** November 7, 2006 (71 FR 65143).

The supplement dated May 14, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on November 7, 2006 (71 FR 65143).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 2007.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 15, 2006, as supplemented by letters dated June 21, and August 23, 2007.

Brief description of amendment: The amendment deletes Technical Specification (TS) Table 3.6.3–1, ''Primary Containment Isolation Valves,'' and relocates the information to the Hope Creek Generating Station Technical Requirements Manual (TRM). The amendment also revises other TS sections that reference TS Table 3.6.3–1.

Date of issuance: August 27, 2007.

Effective date: As of the date of issuance, to be implemented within 90 days. Implementation shall include the relocation of information from the TSs to the TRM as described in the licensee's application dated November 15, 2006, and letters dated June 21, and August 23, 2007.

Amendment No.: 171.

Facility Operating License No. NPF–57: The amendment revised the TSs and the License.

Date of initial notice in ***Federal Register:*** February 13, 2007 (72 FR 6789).

The supplements dated June 21, and August 23, 2007, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2007.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of September, 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. E7–17864 Filed 9–10–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27965; File No. 812–13359]

Financial Investors Variable Insurance Trust et al., Notice of Application September 4, 2007

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of application (''Application'') for exemption, pursuant to section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: Ibbotson Conservative ETF Asset Allocation Portfolio, Ibbotson Income and Growth ETF Asset Allocation Portfolio, Ibbotson Balanced ETF Asset Allocation Portfolio, Ibbotson Growth ETF Asset Allocation Portfolio, Ibbotson Aggressive Growth ETF Asset Allocation Portfolio (collectively, the ''Existing Funds''), each a series of Financial Investors Variable Insurance Trust (the ''Trust''), any other series established from time to time under the Trust (collectively with the Existing Funds, the ''Insurance Funds''), and any future investment company that is designed to fund insurance products and for which ALPS Advisers, Inc. (the ''Investment Adviser''), any successor in interest (collectively with the Investment Adviser, the ''Investment Advisers''), or any affiliates of the Investment Advisers may serve as investment manager, investment adviser, subadviser, administrator, principal underwriter or sponsor (funds advised by such Investment Advisers herein also referred to collectively as the ''Insurance Funds'') (the Trust, the Existing Funds, the Insurance Funds, the Investment Adviser, and the Investment Advisers, referred to collectively as the ''Applicants'').

Summary of Application: The Applicants request an order exempting certain life insurance companies on behalf of their separate accounts that currently invest or may hereafter invest in the Insurance Funds to the extent necessary to permit shares of the Existing Funds (the ''Shares'') and the Insurance Funds to be sold to and held by: (i) Separate accounts funding variable annuity contracts and variable life insurance policies (collectively ''Variable Contracts'') issued by both affiliated life insurance companies and unaffiliated life insurance companies; (ii) trustees of qualified group pension and group retirement plans outside of the separate account context (''Qualified Plans''); (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (iv) any Adviser to an Insurance Fund that is permitted to hold shares in an Insurance Fund consistent with the requirements of regulations issued by the Treasury Department (individually a ''Treasury Regulation'' and collectively the ''Treasury Regulations''), specifically Treasury Regulation Section 1.817–5 for the purpose of providing seed capital to an Insurance Fund; and (v) any other Participating Insurance Company permitted to hold shares of an Insurance Fund (''General Accounts'').

Filing Date: The Application was filed on January 26, 2007, and amended and restated on May 21, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 26, 2007, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: The Commission: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o Jeffrey T. Pike, Esq., Secretary, Financial Investors Variable Insurance Trust, 1290 Broadway, Suite 1100, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Foor, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (telephone (202) 551–8090).

Applicants' Representations

1. Each Insurance Fund is, or will be, registered under the 1940 Act as an open-end management investment company. The Trust (File No. 811–21987) is registered under the 1940 Act as a non-diversified management investment company. Applicants state that the Trust's shares are registered under the Securities Act of 1933, as amended (the ''1933 Act'') (File No. 333–139186) and the investment adviser to the Trust, ALPS Advisers, Inc. is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended.

2. Applicants state that the Existing Funds intend to, and other Insurance Funds may in the future, offer Shares to separate accounts of affiliated and unaffiliated insurance companies funding variable annuity or variable life products. Applicants state that these separate accounts are, or will be, registered as investment companies under the 1940 Act or will be exempt from such registration (individually a ''Separate Account'' and collectively the ''Separate Accounts''). Insurance companies whose Separate Account(s) may now or in the future own Shares are referred to herein as ''Participating Insurance Companies.''

3. Applicants propose that the Funds be permitted to offer and/or sell shares to Separate Accounts funding Variable Contracts issued by Participating Insurance Companies. Applicants represent that the Participating Insurance Companies at the time of their investment in the Insurance Funds either have established or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Applicants represent that each Participating Insurance Company on behalf of its Separate Accounts has entered or will enter into an agreement with each Insurance Fund in which it invests concerning participation by the Participating Insurance Company in such Insurance Fund (a ''Participation Agreement''). The role of the Insurance Funds under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares to the Separate Accounts and complying with any conditions that the Commission may impose.

4. Applicants propose that the Insurance Funds also be permitted to offer and/or sell Shares to Qualified Plans administered by a Trustee. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of Separate Accounts funding Variable Contracts. The Code provides that Variable Contracts shall not be treated as an annuity contract or life insurance policy for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, (individually, a ''Treasury Regulation'' and collectively the ''Treasury Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued Treasury Regulations (Treas. Reg. Section 1.817–5) that established diversification requirements for Variable Contracts, which require the Separate Accounts upon which these contracts or policies are based to be diversified as provided in the Treasury Regulations. In the case of Separate Accounts that invest in underlying investment companies, the Treasury Regulations provide a ''look through'' rule that permits the Separate Account to look to the underlying investment company for purposes of meeting the diversification requirements, provided that the beneficial interests in the investment company are held only by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the tax status of Variable Contracts (Treas. Reg. Section 1.817–5(f)(3)(iii)). Another exception allows the investment manager of the investment company and certain companies related to the investment manager to hold shares of the investment company, an exception that is often used to provide the capital required by section 14(a) of the 1940 Act.

5. Applicants also propose that the Funds be permitted to offer and/or sell shares to an Adviser for the purpose of providing initial capital to an Insurance Fund and to General Accounts. The Regulations permit such sales to an Adviser and to General Accounts so long as the return on shares held by each is computed in the same manner as for shares held by the Separate Accounts, and the Adviser and the General Accounts do not intend to sell shares of the Portfolio held by it to the public. The Treasury Regulations impose an additional restriction on sales to investment advisers, who may hold shares only in connection with the creation of an Insurance Fund. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations will be made to an Adviser for the purpose of providing the initial capital for a Fund and that any Shares purchased by an Adviser will be redeemed immediately if and when the Adviser's investment advisory agreement terminates.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a Separate Account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in section 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies ''which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance Separate Account that owns shares of an underlying fund that also offers its shares to a variable annuity Separate Account or flexible premium variable life insurance Separate Account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

2. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable

life insurance Separate Account that owns shares of an underlying fund that also offers its shares to Separate Accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance Separate Accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.''

3. Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance Separate Accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the Shares are also to be sold to Qualified Plans, an Adviser and General Accounts (collectively, ''Eligible Purchasers''). Applicants note that if the Shares were sold only to Separate Accounts funding variable annuity contracts and/or Eligible Purchasers, exemptive relief under Rule 6e–2(b)(15) would not be necessary. The relief provided for under this section does not relate to Eligible Purchasers or to a registered investment company's ability to sell its shares to Eligible Purchasers. The use of a common management investment company as the underlying investment vehicle for Separate Accounts funding Variable Contracts issued by affiliated and unaffiliated insurance companies, and for Eligible Purchasers, is referred to herein as ''extended mixed and shared funding.''

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the Separate Account consist of the shares of one or more registered management investment companies that offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

5. Moreover, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Eligible Purchasers, as described above. Applicants note that if the Shares were sold only to Separate Accounts funding variable annuity contracts and/or Eligible Purchasers, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Eligible Purchasers or to a registered investment company's ability to sell its shares to Eligible Purchasers.

6. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Portfolios' shares to Eligible Purchasers to result in a prohibition against, or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to Separate Accounts, additional exemptive relief may be necessary if the shares of the Portfolios are also to be sold to Eligible Purchasers. Applicants therefore request relief in order to have the Participating Insurance Companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) even where Eligible Purchasers are investing in the relevant Insurance Fund. Applicants note that if the Shares were to be sold only to Eligible Purchasers, and/or Separate Accounts funding variable annuity contracts, exemptive relief under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) would be unnecessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Eligible Purchasers, or to a registered investment company's ability to sell its shares to Eligible Purchasers.

7. Consistent with the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, the Application requests relief for the class consisting of Participating Insurance Companies and their Separate Accounts (and to the extent necessary, investment advisers, principal underwriters and depositors of such Separate Accounts).

8. In effect, the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to individuals in a large insurance complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as investment vehicles for Variable Contracts. Applicants argue that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, an Adviser or General Accounts. Applicants represent that the Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Insurance Funds. Applicants argue that those individuals who participate in the management of the Insurance Funds will remain the same regardless of which Separate Accounts or Qualified Plans invest in the Insurance Funds. Applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by Separate Accounts of Participating Insurance Companies or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners and Qualified Plan holders.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the

voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

10. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Applicants, therefore, assert that the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

11. Applicants also assert that the sale of Shares to Qualified Plans, an Adviser and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, shares of a portfolio of an investment company sold to a Qualified Plan must be held by the trustees of the Qualified Plan pursuant to section 403(a) of the Employee Retirement Income Security Act, as amended (''ERISA''). Applicants note that (1) Section 403(a) of ERISA endows Qualified Plan trustees with the exclusive authority and responsibility for voting proxies provided neither of two enumerated exceptions to that provision applies; (2) some of the Qualified Plans may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants; and (3) there is no requirement to pass through voting rights to Qualified Plan participants.

12. Applicants argue that an Investment Manager and General Accounts are similar in that they are not subject to any pass-through voting requirements. Applicants therefore conclude that, unlike the case with insurance company Separate Accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Eligible Purchasers.

13. Applicants represent that where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if an Adviser or an affiliate of an Adviser were to serve in the capacity of trustee or named fiduciary with voting responsibilities, an Adviser or its affiliates would have a fiduciary duty to vote relevant Shares in the best interest of the Qualified Plan participants.

14. Further, Applicants assert that even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applicants do not believe that such control would disadvantage other investors in such Portfolio to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Applicants argue that Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

15. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. Applicants assert that the purchase of Shares by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

16. Applicants do not believe that sale of the Shares to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between Variable Contract owners.

17. Applicants assert that permitting an Insurance Fund to sell its shares to an Adviser or to the General Account of a Participating Insurance Company will enhance management of each Insurance Fund without raising significant concerns regarding material irreconcilable conflicts. Unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Fund may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Accordingly, the Fund and any other such Future Funds or Portfolios that are established as new registrants will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Portfolios also will require more limited amounts of initial capital in connection with the creation of new series and the voting of initial shares of such series on matters requiring the approval of shareholders. A potential source of the requisite initial capital is a Portfolio's adviser or a Participating Insurance Company. Either of these parties may have an interest in making the requisite capital investments and in participating with an Insurance Fund in its organization. Applicants note, however, that the provision of seed capital or the purchase of shares in connection with the management of an Insurance Fund by its investment adviser or by a Participating Insurance Company may be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15).

18. Given the conditions of Treas. Reg. Section 1.817–5(f)(3) and the harmony of interest between an Insurance Fund, on the one hand, and an Adviser or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, Applicants assert such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants argue that permitting investments by an Adviser, or by General Accounts, will permit the orderly and efficient creation of an Insurance Fund, and reduce the expense

and uncertainty of using outside parties at the early stages of the Insurance Fund's operations.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees (the ''Board'') of each Insurance Fund will consist of persons who are not ''interested persons'' of the Insurance Fund, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board of each Insurance Fund will monitor the Insurance Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in the Insurance Fund, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in an Insurance Fund), an Adviser, and any trustee on behalf of a Qualified Plan that executes a Participation Agreement upon becoming an owner of 10 percent or more of the assets of an Insurance Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board of the relevant Insurance Fund. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Trustee for a Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their Participation Agreements with the relevant Insurance Fund, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans under their Participation Agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board of an Insurance Fund, or a majority of the disinterested directors/ trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors/trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Fund and reinvesting such assets in a different investment vehicle including another Insurance Fund, submitting the question as to whether such segregation should be implemented to a vote of all affected contract or policy owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract or policy owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the relevant Insurance Fund, to withdraw such Participating Insurance Company's Separate Account investment in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their Participation Agreement with the relevant Insurance Fund, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants. For purposes of this Condition 4, a majority of the disinterested directors/ trustees of the Board of each Insurance Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Fund or an Adviser, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract or policy owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer; or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board of each Insurance Fund's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as

interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote the Shares held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in the relevant Insurance Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with the relevant Insurance Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares held in its General Account or otherwise attributed to it, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to Variable Contract owners, an Adviser, who has provided seed capital for the Insurance Fund, and any General Account will vote their respective Shares in the same proportion as all variable contract owners having voting rights with respect to that Insurance Fund; provided, however, that an Adviser or any General Account shall vote its Shares in such other manner as may be required by the Commission or its staff.

8. Each Insurance Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, which, for these purposes, shall be the persons having a voting interest in the Shares, and, in particular, the Insurance Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although each Insurance Fund is not, or will not be, one of those trusts of the type described in section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each Insurance Fund will act in accordance with the Commission's interpretations of the requirements of section 16(a) with respect to periodic elections of directors/trustees and with whatever rules the Commission may promulgate thereto.

9. An Insurance Fund will make its Shares available to the Separate Accounts and Qualified Plans at or about the time it accepts any seed capital from an Adviser or General Account of a Participating Insurance Company.

10. Each Insurance Fund has notified, or will notify, all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Fund will disclose, in its prospectus that: (a) Shares of the Existing Funds may be offered to Separate Accounts funding both variable annuity contracts and variable life insurance policies and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Insurance Fund and the interests of Qualified Plans investing in the Insurance Fund, if applicable, may conflict; and (c) the Insurance Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

11. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the Application, then each Insurance Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

12. Each Participant, at least annually, will submit to the Board of Each Insurance Fund such reports, materials, or data as a Board reasonably may request so that the directors/trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in the Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board of an Insurance Fund. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their Participation Agreements with the relevant Insurance Fund.

13. All reports of potential or existing conflicts received by the Board of each Insurance Fund, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Insurance Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan an owner of 10 percent or more of the assets of the Insurance Fund unless the Trustee for such Qualified Plan executes an agreement with the Insurance Fund governing participation in the Insurance Fund that includes the conditions set forth herein to the extent applicable. A Trustee for a Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of Shares.

Conclusions

Applicants submit that, for the reasons summarized above and to the extent necessary or appropriate to provide for the transactions described herein, the requested exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, in accordance with the standards of section 6(c) of the 1940 Act, are in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56351; File No. SR–Amex–2007–81]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Eliminate Position and Exercise Limits for Options on the Russell 2000 Index, and To Specify That Certain Reduced-Value Options on Broad-Based Security Indexes Have No Position and Exercise Limits Pursuant to Section

September 4, 2007.

19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On August 21, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate position and exercise limits for options on the Russell 2000 Index (''RUT''), and to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Amex Rule 904C to eliminate position and exercise limits for options on RUT, a broad-based securities index that is multiply-listed and heavily traded.[3] The Exchange further proposes to amend Rule 904C to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. Currently, options on the Full Size Nasdaq-100 Index (''NDX'') have no position and exercise limits. In this regard, the Exchange also proposes to eliminate position and exercise limits for options on the Mini Nasdaq-100 Index (''MNX'').

Eliminate Position and Exercise Limits for RUT Options

The Exchange believes that the circumstances and considerations relied upon in approving the elimination of position and exercise limits for other heavily traded broad-based index options (*e.g.*, options on NDX, the Major Market Index (''XMI''), and the Institutional Index (''XII'')) equally apply to the current proposal relating to position and exercise limits for RUT options.[4]

In approving the elimination of position and exercise limits for NDX, XMI, and XII options, the Commission considered the capitalization of the each of these indexes and the deep and liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruption in the underlying markets. The Commission also noted the active trading volume for options on those indexes. Amex believes that RUT shares these factors in common with the NDX and XMI. As of July 31, 2007, the approximate market capitalization of the NDX and XMI [5] were $2.28 and $2.82 trillion, respectively, the average daily trading volume (''ADTV'') for the components of the indexes were 572 million and 171 million shares, respectively, and the ADTV for options on the indexes were 64,003 contracts per day, and 1,338 contracts per day, respectively. Amex believes that RUT has very comparable characteristics. The market capitalization for RUT is $1.73 trillion dollars, the ADTV for the underlying securities is 535 million shares, and the ADTV for RUT options is 79,000 contracts.

In approving the elimination of position and exercise limits for NDX, XMI, and XII, the Commission also noted the financial requirements imposed by both the Exchange and the Commission serve to address any concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in options on the indexes. These financial requirements also apply to RUT options. Under Amex rules, the Exchange also has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3–1 under the Act [6] to the extent of any resulting margin deficiency.[7]

In approving the elimination of position and exercise limits for NDX, XMI, and XII the Commission relied heavily on the Exchange's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits in options on those indexes. The Exchange represents that it monitors the trading in RUT options in the same manner as trading in NDX and XMI options and that the current Amex surveillance procedures are adequate to continue monitoring RUT options. In addition, the Exchange intends to impose a reporting requirement on Amex members or member organizations (other than Amex specialists and registered options traders) who trade RUT options. This reporting requirement, which is currently imposed on members who trade NDX and XMI options, will require members or member organizations who maintain in excess of 100,000 RUT option

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current position and exercise limits for RUT options are 50,000 contracts, with no more than 30,000 of such contracts in a series in the nearest expiration month. *See* Securities Exchange Act Release No. 53191 (January 30, 2006), 71 FR 6111 (February 6, 2006) (SR–Amex–2005–061).

[4] *See* Securities Exchange Act Release No. 52649 (October 21, 2005), 70 FR 62146 (October 28, 2005) (SR–Amex–2005–063) (''NDX Approval Order''); *see also* Securities Exchange Act Release No. 46393 (August 21, 2002), 67 FR 55289 (August 28, 2002) (SR–Amex–2002–31) (''XMI/XII Permanent Approval Order'').

[5] Options on XII are no longer listed and traded on the Exchange.

[6] 17 CFR 240.15c3–1.

[7] *See* Commentary .03 to Amex Rule 904C.

contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange's Regulation Department. The Exchange may also specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.

The Exchange proposes to delete the reference to XII options in Rule 904C(b), Commentary .03 to Rule 904C, Rule 906C(b), and Rule 906G, as XII options are no longer listed and traded on the Exchange.

For consistency, the Exchange also proposes to amend Rule 906G(a)(i), (iv), and (v) relating to the trading of FLEX broad-based index options to reflect that there shall be no position or exercise limits on RUT options and to adopt the 100,000 contract reporting requirement for FLEX RUT options. All other FLEX rules applicable to NDX and XMI options shall also apply, where applicable, to RUT options.

The Exchange believes that eliminating position and exercise limits for RUT options and FLEX RUT options is consistent with Amex rules relating to similar broad-based indexes and also allows Amex members and their customers greater hedging and investment opportunities.

Elimination of Position Limits for Reduced-Value Options on Broad-Based-Indexes for Which There Are Not Position and Exercise Limits for Full-Value Options

The Exchange lists and trades reduced-value options on broad-based indexes for which the Exchange also lists and trades full-value options (*e.g.*, MNX options). When the exchange received approval to list and trade MNX options, the proscribed position and exercise limits were equivalent to the reduced-value contract factor (*e.g.*, 10) multiplied by the applicable position and exercise limits for the full-value options on the same broad-based index.[8] For example, when the Exchange received approval to list and trade NDX and MNX options,[9] the position and exercise limits for MNX (1/10th NDX value) options were 750,000 contracts, which was equal to the applicable factor (10) multiplied by the position limit for NDX options (75,000 contracts). In the NDX Approval Order, the Exchange noted that NDX contracts would be aggregated with MNX contracts to determine compliance with applicable position and exercise limits. Since position and exercise limits were eliminated for NDX options,[10] the Exchange now proposes to eliminate position and exercise limits for MNX options. The Exchange further proposes to amend Rule 904C(b) to state that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits, would similarly have no position and exercise limits.

In addition, because position and exercise limits for reduced-value options are aggregated with full-value options for purposes of determining compliance with position and exercise limits, the Exchange proposes to amend Rule 906C to reflect that such aggregation would apply when calculating reporting requirements (*e.g.*, 10 MNX options equal 1 NDX full-value contract).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–81 and should be submitted on or before October 2, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[13] In

[8] *See* Securities Exchange Act Release No. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (SR–Amex–2005–038).

[9] *See* NDX Approval Order, *supra* note 4.

[10] *Id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

particular, the Commission believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[14]

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.

The Commission notes that it continues to believe that the fundamental purposes of position and exercise limits remain valid. Nevertheless, the Commission believes that experience with the trading of index options as well as enhanced reporting requirements and the Exchange's surveillance capabilities have made it possible to approve the elimination of position and exercise limits on certain broad-based index options. Thus, in 2002, the Commission approved an Amex proposal to eliminate permanently position and exercise limits for options on XMI and XII,[15] and, in 2005, the Commission approved an Amex proposal to eliminate permanently the position and exercise limits for options on NDX.[16] The Commission believes that the considerations upon which it relied in approving the elimination of position and exercise limits for XMI, XII, and NDX options equally apply with respect to options on RUT.

As noted by Amex, the market capitalization of the RUT as of July 31, 2007, was $1.73 trillion. The ADTV for all underlying components of the index was 535 million shares. The Commission believes that the enormous market capitalization of RUT and the deep, liquid market for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. Removing position and exercise limits for RUT options may also bring additional depth and liquidity, in terms of both volume and open interest, to RUT options without significantly increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.

In addition, the Commission believes that financial requirements imposed by both the Exchange and the Commission adequately address concerns that an Amex member or its customer may try to maintain an inordinately large unhedged position in RUT options. Current risk-based haircut and margin methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[17] Under the proposal, Amex also would have the authority under its rules to impose a higher margin requirement upon an account maintaining an under-hedged position when it determines a higher requirement is warranted. As noted in the Amex rules, the clearing firm carrying the account would be subject to capital charges under Rule 15c3–1 under the Act to the extent of any margin deficiency resulting from the higher margin requirement.

In approving the elimination of position and exercise limits for options on XMI, XII, and NDX, the Commission took note of the enhanced surveillance and reporting safeguards that Amex had adopted to allow it to detect and deter trading abuses that might arise as a result.[18] Amex represents that it monitors trading in RUT options in much the same manner as trading in XMI and NDX options. These safeguards, including the 100,000-contract reporting requirement described above, would allow Amex to monitor large positions in order to identify instances of potential risk and to assess and respond to any market concerns at an early stage. In this regard, the Commission expects Amex to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. Moreover, as previously noted, the Exchange has the flexibility to specify other reporting requirements, as well as to vary the limit at which the reporting requirements may be triggered.

The Commission further notes that in eliminating position and exercise limits for FLEX RUT options, Amex is adopting the same additional rules for these options that currently exist for FLEX XMI and NDX options.

In addition, the Commission notes that the Exchange's existing rules applicable to position and exercise limits for full-value broad-based index options are used to calculate the position and exercise limits for reduced-value options. The Exchange proposes to amend its rules for those specified broad-based index options that do not have position and exercise limits to specifically state that there will not be position and exercise limits on the reduced-value options on those same broad-based index options. The Exchange also proposes to amend its rules to state that reduced-value options will be aggregated with full-value options when calculating reporting requirements.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act, to grant accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated (''CBOE'').[19] The Commission received no comments regarding the CBOE proposal.[20] The Commission believes that Amex's proposal to eliminate position and exercise limits for RUT options raises no new regulatory issues. Moreover, accelerating approval of the proposed rule change will allow Amex members and their customers greater hedging and investment opportunities in RUT options without further delay.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Amex–2007–81), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

[14] 15 U.S.C. 78f(b)(5).

[15] *See* XMI/XII Permanent Approval Order, *supra* note 4.

[16] *See* NDX Approval Order, *supra* note 4.

[17] *See* Securities Exchange Act Release No. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (SR–Amex–98–38) (''XMI/XII Pilot Approval Order'').

[18] *See id.* and NDX Approval Order, *supra* note 4.

[19] *See* Securities Exchange Act Release No. 56350 (September 4, 2007) (SR–CBOE–2007–79).

[20] *See* Securities Exchange Act Release No. 56191 (August 2, 2007), 72 FR 44894 (August 9, 2007) (SR–CBOE–2007–79).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56350; File No. SR–CBOE–2007–79]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto To Eliminate Position and Exercise Limits for Options on the Russell 2000 Index, and To Specify That Certain Reduced-Value Options on Broad-Based Security Indexes Have No Position and Exercise Limits

September 4, 2007.

I. Introduction

On July 17, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate position and exercise limits for options on the Russell 2000 Index (''RUT'') and to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits similarly have no position and exercise limits. On August 2, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on August 9, 2007 for a 15-day comment period.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

CBOE proposes to amend Rules 24.4 and 24.5 to eliminate position and exercise limits for options on RUT, a broad-based security index. In connection with this change, RUT options would be subject to specific reporting requirements and additional margin provisions imposed by CBOE with respect to options on the Standard & Poor's 500 Index (''SPX''), the Standard & Poor's 100 Index (''OEX''), the Dow Jones Industrial Average (''DJX''), and the Nasdaq–100 Index (''NDX''), other broad-based index options that, under the Exchange's current rules, are not subject to position and exercise limits.

The Exchange notes that in approving the elimination of position and exercise limits for SPX, OEX, DJX, and NDX options, the Commission considered the enormous capitalization of each of these indexes and the deep and liquid markets for the securities underlying each index that significantly reduced concerns of market manipulation or disruption in the underlying markets.[4] CBOE noted that the market capitalization of RUT, as of the date of filing of the proposed rule change, was $1.73 trillion and the average daily trading volume (''ADTV''), in the aggregate, for the component securities of RUT, for the period as of three months prior to the date of filing of the proposed rule change, was 535 million shares. For the same period, the ADTV for options on RUT was 79,000 contracts.

The Exchange also states that in the SPX/OEX/DJX/NDX Approval Orders, the Commission noted that the financial requirements imposed by both the Exchange and the Commission serve to address any concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in the index options. CBOE notes that these same financial requirements would apply equally to RUT options. The Exchange further notes that it has the authority to impose additional margin upon accounts maintaining underhedged positions and is able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3–1 under the Act[5] to the extent of any resulting margin deficiency.[6]

CBOE indicates that the Commission, in the SPX/OEX/DJX/NDX Approval Orders, relied substantially on the Exchange's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits on SPX, OEX, DJX, and NDX options. The Exchange represents that it monitors the trading in RUT options in the same manner as trading in SPX, OEX, DJX, and NDX options and that the current CBOE surveillance procedures are adequate to continue monitoring RUT options. In addition, the Exchange intends to impose a reporting requirement on CBOE members or member organizations (other than CBOE market-makers) that trade RUT options. This reporting requirement, which is currently imposed on members who trade SPX, OEX, and NDX options, would require members or member organizations who maintain in excess of 100,000 RUT option contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange's Department of Market Regulation.[7] The Exchange also would be permitted to specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.[8]

In addition, CBOE proposes to amend Rule 24A.7 relating to the trading of FLEX broad-based index options to eliminate position and exercise limits on FLEX RUT options, and to adopt for FLEX RUT options the same 100,000 contract reporting requirement and the additional margin provisions that currently apply to FLEX SPX, OEX, and NDX options. The Exchange believes that eliminating position and exercise limits for RUT options and FLEX RUT options is consistent with CBOE rules relating to similar broad-based indexes and also would allow CBOE members and their customers greater hedging and investment opportunities.

The Exchange notes that it lists and trades several reduced-value options on broad-based indexes for which the Exchange also lists and trades full-value options (*e.g.*, Mini-SPX Index (''XSP'') options, Mini-Russell 2000 Index (''RMN'') options, and Mini-Nasdaq–100 Index (''MNX'') options). The Exchange states that when it received approval to list and trade reduced-value options on broad-based indexes, the proscribed position and exercise limits were equivalent to the reduced-value contract

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56191 (August 2, 2007), 72 FR 44894.

[4] *See* Securities Exchange Act Release Nos. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22) (''SPX/OEX/DJX Permanent Approval Order''); and 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR–CBOE–2005–41) (''NDX Approval Order'') (collectively, ''SPX/OEX/DJX/NDX Approval Orders''). *See also* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (SR–CBOE–98–23) (''SPX/OEX/DJX Pilot Approval Order'').

[5] 17 CFR 240.15c3–1.

[6] *See* Interpretation and Policy .04 to CBOE Rule 24.4.

[7] *See* Interpretation and Policy .03 to CBOE Rule 24.4. The reporting requirement for DJX options is triggered at 1 million contracts.

[8] *Id.*

factor (*e.g.*, 10) multiplied by the applicable position and exercise limits for the full-value option on the same broad-based index. In other words, the Exchange's existing rules applicable to position and exercise limits for full-value broad-based index options are used to calculate the position and exercise limits for reduced-value options.

Conversely, when the Exchange's rules specifically state that certain full-value broad-based index options have no position and exercise limits, the same equally applies to reduced-value options on those same broad-based indexes. The Exchange proposes to amend Rules 24.4 and 24.5 in order to codify this provision. In addition, because position and exercise limits for reduced-value options are aggregated with full-value options for purposes of determining compliance with position and exercise limits, the Exchange proposes to amend Rules 24.4 and 24A.7 to reflect that such aggregation will apply when calculating reporting requirements.

Finally, the Exchange proposes to make technical changes to Rules 24.4, 24.5, and 24A.7 to specify that there are no position and exercise limits for European-Style Exercise S&P 100 Index options (''XEO'') and FLEX XEO options, and to add XEO options to the position reporting and margin rules.[9] The Exchange notes that the only difference between OEX and XEO options is the manner in which the respective contracts are exercised (*i.e.* American-style versus European-style).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[10] In particular, the Commission believes the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[11]

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the holder of the options position.

The Commission notes that it continues to believe that the fundamental purposes of position and exercise limits remain valid. Nevertheless, the Commission believes that experience with the trading of index options as well as enhanced reporting requirements and the Exchange's surveillance capabilities have made it possible to approve the elimination of position and exercise limits on certain broad-based index options. Thus, in 2001, the Commission approved a CBOE proposal to eliminate permanently position and exercise limits for options on SPX, OEX, and DJX,[12] and, in 2005, the Commission approved a CBOE proposal to eliminate permanently position and exercise limits for options on NDX.[13] The Commission believes that the considerations upon which it relied in approving the elimination of position and exercise limits for SPX, OEX, DJX, and NDX options equally apply with respect to options on RUT.

As noted by CBOE, the market capitalization of RUT as of the date of filing of the proposal was $1.73 trillion. The ADTV for the period as of three months prior to the date of filing of the proposed rule change for all underlying components of the index was 535 million shares. The Commission believes that the enormous market capitalization of RUT and the deep, liquid market for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. Removing position and exercise limits for RUT options may also bring additional depth and liquidity, in terms of both volume and open interest, to RUT options without significantly increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.

In addition, the Commission believes that financial requirements imposed by both the Exchange and the Commission adequately address concerns that a CBOE member or its customer may try to maintain an inordinately large unhedged position in RUT options. Current risk-based haircut and margin methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[14] Under the proposal, CBOE also would have the authority under its rules to impose a higher margin requirement upon an account maintaining an under-hedged position when it determines a higher requirement is warranted. As noted in the CBOE rules, the clearing firm carrying the account would be subject to capital charges under Rule 15c3–1 under the Act to the extent of any margin deficiency resulting from the higher margin requirement.

In approving the elimination of position and exercise limits for options on the SPX, OEX, DJX, and NDX, the Commission took note of the enhanced surveillance and reporting safeguards that CBOE had adopted to allow it to detect and deter trading abuses that might arise as a result.[15] CBOE represents that it monitors trading in RUT options in much the same manner as trading in SPX, OEX, DJX, and NDX options. These safeguards, including the 100,000-contract reporting requirement described above, would allow CBOE to monitor large positions in order to identify instances of potential risk and to assess and respond to any market concerns at an early stage. In this regard, the Commission expects CBOE to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. Moreover, as previously noted, the Exchange has the flexibility to specify other reporting requirements, as well as to vary the limit at which the reporting requirements may be triggered.

The Commission further notes that in eliminating position and exercise limits for FLEX RUT options, CBOE is adopting the same additional rules for these options that currently exist for FLEX SPX, OEX, and NDX options.

[9] *See* Securities Exchange Act Release No. 44556 (July 16, 2001), 66 FR 38046 (July 20, 2001) (SR–CBOE–2001–39) (''XEO Approval Order'').

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* SPX/OEX/DJX Permanent Approval Order, *supra* note 4.

[13] *See* NDX Approval Order, *supra* note 4.

[14] *See* SPX/OEX/DJX Pilot Approval Order, *supra* note 4.

[15] *See id.* and NDX Approval Order, *supra* note 4.

In addition, the Commission notes that the Exchange's existing rules applicable to position and exercise limits for full-value broad-based index options are used to calculate the position and exercise limits for reduced-value options. The Exchange proposes to amend its rules for those specified broad-based index options that do not have position and exercise limits to specifically state that there will not be position and exercise limits on the reduced-value options on those same broad-based index options. The Exchange also proposes to amend its rules to state that reduced-value options will be aggregated with full-value options when calculating reporting requirements.

The Exchange also is making technical corrections to its rules to reflect that there are no position and exercise limits for XEO options. The Commission notes that position and exercise limits for XEO options were previously eliminated and CBOE is simply updating its rules to reflect this fact.[16]

The Commission finds good cause, consistent with section 19(b)(2) of the Act,[17] to grant accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes, as stated above, that RUT has similar characteristics to the other broad-based indexes for which position and exercise limits have been eliminated for options on those indexes. Specifically, the Commission believes that the enormous market capitalization of RUT and the deep, liquid market for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. The Commission received no comments regarding the proposed rule change and the Commission believes that the proposed rule change raises no new regulatory issues of material concern. The Commission believes that accelerating approval of the proposed rule change will allow CBOE members and their customers greater hedging and investment opportunities with respect to RUT options without further delay.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2007–79), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17784 Filed 9–10–07; 8:45 am]

BILLING CODE 8010–01–P

[16] *See* XEO Approval Order, *supra* note 9; *see also* SPX/OEX/DJX Permanent Approval Order, *supra* note 4.

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56345; File No. SR–NASDAQ–2007–058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Step-Outs and Transfers of Sales Fees

August 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to offer functionality to allow Nasdaq members to process (i) step-outs and (ii) transferals of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations (''SROs'') and proposes to establish fees for these services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to allow Nasdaq members to process step-outs and transferals of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations (''SROs'') through the Nasdaq Exchange and is proposing to establish fees for these services.

Step-Outs

A step-out is a mechanism for transferring a broker's position in a security in a manner that does not constitute a trade. In one form of a step-out, a party to a previously executed trade transfers its position in the trade to one or more other parties. For example, a broker that buys a large block of stock on behalf of several broker-dealer customers may ''step-out'' of the trade to transfer and allocate its position to the customers. Thus, under this form of a step-out, there is a single trade on a securities market, coupled with an arrangement between one of the trade counterparties and one or more additional parties to shift the settlement obligations for the trade to the additional parties. In another form of step-out, a broker uses a clearing-only report to transfer its position from an account at one clearing broker to an account at another clearing broker for its own internal accounting purposes.

Historically, when The Nasdaq Stock Market, Inc. (''Nasdaq Inc.'') operated as a facility of the National Association of Securities Dealers (''NASD''), step-outs were effected through non-tape, clearing-only trade report entries into the Automated Confirmation Transaction Service (''ACT''). Now that Nasdaq is fully operational as a national securities exchange, ACT serves both as the mechanism for reporting trades that are automatically executed through the Nasdaq Market Center to the tape and has also been licensed for use by the NASD/NASDAQ Trade Reporting Facility (''NASD/NASDAQ TRF'') as a technology platform for collecting over-the-counter (''OTC'') trade reports and reporting them to the tape. In this dual role, ACT continues to accept step-out entries regardless of whether the underlying trade occurred on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Nasdaq Market Center or was an OTC trade reported to the NASD/NASDAQ TRF.

Since step-outs are not trades, they are not an inherent OTC activity. Rather, an exchange may appropriately offer step-out capability to its members as a value-added service. Nasdaq notes that the New York Stock Exchange (''NYSE'') and the American Stock Exchange offer step-out functionality to their members. Nasdaq is proposing to allow step-out capability under its rules with respect to any trade to which a Nasdaq member is a party regardless of the market on which the trade was executed.[5] However, the parties to a step-out under Nasdaq rules must all be Nasdaq members and must be parties to an agreement such as the NASD's new Uniform Trade Reporting Facility Service Bureau/Executing Broker Agreement under which the broker transferring the position has received authorization from the transferee broker to act on its behalf. Each party to a step-out under Nasdaq rules will pay $0.029. If the parties to the step-out also transfer the obligation to pay a Sales Fee or similar fee, the party transferring the fee will also pay the fee transfer charge discussed below.

Step-out reporting would also continue to be permitted by NASD under the NASD/NASDAQ TRF framework. However, it is Nasdaq's understanding that NASD expects to submit a proposed rule change to the Commission in the near future under which the NASD/NASDAQ TRF would be available for step-outs only when the original trade was reported to it. By contrast, Nasdaq members could use the Nasdaq exchange to effect step-outs from trades executed in any venue, including trades reported to a trade reporting facility.

Transfers of Sales Fees

Under Rule 7002, Nasdaq charges a sales fee to its members to defray the costs of the fees that it must pay to the Commission under Section 31(b) of the Act.[6] Other self-regulatory organizations charge similar fees. Nasdaq is proposing to adopt rules under which a member may transfer the obligation to pay a sales fee or similar fee associated with a particular trade to another member either at the time of the step-out or at some other time.[7] ACT has historically been used for transfers of the obligation to pay the fees of other SROs, including NASD's transaction fee under Schedule A, Section 3 of the NASD By-Laws.[8] Since Nasdaq became operational as an exchange, ACT has also been used for transfers of sales fee obligations but under the framework of the NASD/NASDAQ TRF. Nasdaq believes that transfers of obligations to pay sales fees and similar fees may appropriately be conducted pursuant to Nasdaq's rules as an exchange since they are not inherently an OTC function. Accordingly, the proposed rule recognizes that ACT may be used to transfer the obligation to pay sales fees and similar fees if the clearing firms for the trades to which the fees relate are party to an agreement authorizing such transfers between themselves and/or the firms on whose behalf they clear trades. Nasdaq will impose a charge equal to 10% of the transferred fee with a minimum charge of $0.025 and a maximum charge of $0.25. The fee would be paid by the transferring party. An NASD member may continue to use ACT to transfer the obligation to pay an NASD transaction fee under the NASD/NASDAQ TRF framework. However, such action would have to be performed pursuant to NASD rules. NASD has informed Nasdaq that it expects to file a proposed rule change to permit the transfer of the obligation to pay NASD fees under that framework.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[9] and in particular with Sections 6(b)(4) of the Act[10] because the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that offering step-out and fee transfer functionality benefits its members by enhancing the efficiency of their post-trade operations. Nasdaq's proposed fees are reasonable and are comparable to Nasdaq Inc.'s prior fees for non-tape submissions to ACT. Nasdaq also notes that its proposed fee step-out fee of $0.029 per side compares favorably to NYSE's published step-out fee of $0.25 per trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder[12] because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate. Nasdaq believes that the filing may appropriately be designated as ''non-controversial'' because Nasdaq is proposing a clearer framework for offering value-added services that have consistently been offered through Nasdaq's ACT system. Nasdaq also notes that the NYSE and Amex currently offer their members comparable capabilities for conducting step-outs. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[5] The report of a step-out submitted to ACT pursuant to the proposed rule will be marked as a Nasdaq Exchange entry so as to clearly distinguish it from an NASD/Nasdaq TRF entry, which also is reported through ACT. The rule further stipulates that a non-tape, clearing-only submission may not be used for the purpose of reporting a trade execution.

[6] 15 U.S.C. 78ee(b).

[7] For example, a fee transfer may occur independent of a step-out in a situation where a party to a riskless principal transaction transfers the obligation to pay the resulting Sales Fee to its customer.

[8] Such transfers are indirect. Thus, if Broker A sold shares on Exchange B, Broker A would pay the resulting fee to Exchange B but could impose an offsetting obligation on Broker C for reimbursement.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–058 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at Nasdaq's principal office and on Nasdaq's Web site at *http://nasdaq.complinet.com/file_store/pdf/rulebooks/NASDAQ_SR-NASDAQ-2007-058.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–058 and should be submitted on or before October 2, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17783 Filed 9–10–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2007.

SUMMARY: On May 1, 2007, the Commission submitted to Congress amendments to the federal sentencing guidelines and published these amendments in the **Federal Register** on May 21, 2007. *See* 72 FR 28558. The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2007, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). *See* 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary in order to execute correctly the amendments submitted to Congress. This notice sets forth technical and conforming amendments to commentary related to the amendments submitted to Congress on May 1, 2007, that will become effective on November 1, 2007, absent congressional action to the contrary.

Authority: USSC Rules of Practice and Procedure 4.1.

Ricardo H. Hinojosa,

Chair.

Retroactive Application of Amendment 5 Submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 702))

1. Amendment: Section 1B1.10(c) is amended by striking ''and'' and by inserting '', and 702'' before the period.

Reason for Amendment: Amendment 5 submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 702)) corrects typographical errors in subsection (b)(13)(C) of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) and subsection (b)(1) of § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien). As stated in the reason for amendment accompanying Amendment 5, this amendment adds Amendment 5 to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) as an amendment that the court may consider for retroactive application.

Technical and Conforming Amendments

2. Amendment: The Commentary to § 2A3.4 captioned ''Statutory Provisions'' is amended by striking ''Provisions'' and inserting ''Provision''.

Section 2A3.5(b)(1)(A), as added by Amendment 4 submitted to Congress on May 1, 2007 (*see* FR 72 28558; USSG App. C (Amendment 701)), is amended by inserting a comma after ''minor''.

Chapter Two, Part D is amended in the heading by inserting ''AND NARCO–TERRORISM'' after ''DRUGS''.

The Commentary to § 2D1.1 captioned ''Application Notes'', as amended by Amendment 9 submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 706)), is further amended by striking subdivision (D) of Note 10 and inserting the following:

''(D) Determining Base Offense Level in Offenses Involving Cocaine Base and Other Controlled Substances.—

(i) In General.—If the offense involves cocaine base ('crack') and one or more other controlled substance, determine the base offense level as follows:

(I) Determine the base offense level for the quantity of cocaine base involved in the offense.

(II) Using the marihuana equivalency obtained from the table in this subdivision, convert the quantity of cocaine base involved in the offense to its equivalent quantity of marihuana.

Base offense level	Marihuana equivalency
38	6.7 kg of marihuana per g of cocaine base.
36	6.7 kg of marihuana per g of cocaine base.
34	6 kg of marihuana per g of cocaine base.
32	6.7 kg of marihuana per g of cocaine base.
30	14 kg of marihuana per g of cocaine base.
28	11.4 kg of marihuana per g of cocaine base.
26	5 kg of marihuana per g of cocaine base.
24	16 kg of marihuana per g of cocaine base.
22	15 kg of marihuana per g of cocaine base.
20	13.3 kg of marihuana per g of cocaine base.
18	10 kg of marihuana per g of cocaine base.
16	10 kg of marihuana per g of cocaine base.
14	10 kg of marihuana per g of cocaine base.
12	10 kg of marihuana per g of cocaine base.

(III) Determine the combined marihuana equivalency for the other controlled substance or controlled substances involved in the offense as provided in subdivision (B) of this note.

(IV) Add the quantity of marihuana determined under subdivisions (II) and (III), and look up the total in the Drug Quantity Table to obtain the combined base offense level for all the controlled substances involved in the offense.

(ii) Example.—The case involves 1.5 kg of cocaine, 10 kg of marihuana, and 20 g of cocaine base. Under the Drug Quantity Table, 20 g of cocaine base corresponds to a base offense level of 26. Pursuant to the table in subdivision (II), the base offense level of 26 corresponds to a marihuana equivalency of 5 kg per gram of cocaine base. Therefore, the equivalent quantity of marihuana for the cocaine base is 100 kg (20 g × 5 kg = 100 kg). Pursuant to subdivision (B), the equivalent quantity of marihuana for the cocaine and marihuana is 310 kg. (The cocaine converts to an equivalent of 300 kg of marihuana (1.5 kg × 200 g = 300 kg), which, when added to the 10 kg of marihuana, results in an equivalent quantity of 310 kg of marihuana.) Adding the equivalent quantities of marihuana of all three drug types results in a combined quantity of 410 kg of marihuana (100 kg + 310 kg = 410 kg), which corresponds to a combined base offense level of 28 in the Drug Quantity Table.''.

The Commentary to § 2N2.1 captioned ''Application Notes'' is amended in Note 4 by inserting ''and Narco-Terrorism'' after ''Drugs''.

The Commentary to § 5B1.3 captioned ''Application Note'', as added by Amendment 4 submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 701)), is amended by striking ''(b)'' each place it appears and inserting ''(a)''.

The Commentary to § 5D1.3 captioned ''Application Note'', as added by Amendment 4 submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 701)), is amended by striking ''(b)'' each place it appears and inserting ''(a)''.

Appendix A (Statutory Index) is amended by striking the lines referenced to ''50 U.S.C. 421'' and ''50 U.S.C. 783(b)'' the first place they appear.

Reason for Amendment: This amendment makes various technical and conforming amendments in order to execute properly amendments submitted to Congress on May 1, 2007, and that will become effective on November 1, 2007. Specifically, the amendment corrects grammatical errors in the commentary to § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact); amends the commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy); changes the heading in Chapter Two, Part D and makes the conforming change to § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product); corrects typographical errors in §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release); and amends Appendix A to remove duplicate listings.

[FR Doc. E7–17796 Filed 9–10–07; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of extension of the deadline for application to the Victims Advisory Group

SUMMARY: The United States Sentencing Commission is issuing this notice to advise the public that the application period for membership in the Victims Advisory Group has been extended to November 13, 2007. The deadline was originally July 30, 2007.

This comment period is extended to ensure full dissemination of the information surrounding this group's inception to all appropriate parties and sufficient time for those parties to apply for membership.

SUPPLEMENTARY INFORMATION: After considering the request of the Judicial Conference of the United States regarding the formation of a victims advisory group, the United States Sentencing Commission has decided to establish a standing victims advisory group pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. The purpose of the advisory group is (1) To assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide the Commission its views on the Commission's activities as they relate to victims of crime; (3) to disseminate information regarding sentencing issues to organizations represented by the advisory group and to other victims of crime and victims advocacy groups, as appropriate; and (4) to perform any other functions related to victims of crime as the Commission requests. The victims advisory group will consist of not more than 9 members, each of whom may serve not more than two consecutive 3-year terms.

The Commission issued an invitation to apply for membership of the victims advisory group on June 19, 2007 (72 FR 33798). Applications were initially due to the Commission on July 30, 2007. The Commission hereby invites additional applications from any person or group who has knowledge, expertise, or experience in the area of federal crime victimization. Requests to be considered for the initial membership of the victims advisory group must be received by the Commission not later than November 13, 2007. Applications may be sent to Michael Courlander at the address listed below.

DATES: Applications should be received not later than November 13, 2007.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Victims Advisory Group Application.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

Authority: USSC Rules of Practice and Procedure 5.4.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E7–17798 Filed 9–10–07; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In July 2007, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2008. See 72 FR 41795 (July 31, 2007). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2008, and possibly continuing into the amendment cycle ending May 1, 2009. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2008. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2008.

As so prefaced, the Commission has identified the following priorities:

(1) Implementation of crime legislation enacted during the 110th Congress warranting a Commission response, including (A) the Animal Fighting Prohibition Enforcement Act of 2007, Public Law 110–22 ; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines;

(2) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled *Cocaine and Federal Sentencing Policy*, and to develop appropriate guideline amendments in response to any related legislation;

(3) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States* v. *Booker* and *United States* v. *Rita,* including any appropriate amendments to the guidelines or other changes to the *Guidelines Manual* with respect to those decisions and other cases that may be adjudicated during this amendment cycle, as well as continuation of its monitoring and analysis of post-*Booker* federal sentencing practices, data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts;

(4) Continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted;

(5) Continuation of its policy work, in light of the Commission's prior and ongoing research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History).

(6) Continuation of guideline simplification efforts with consideration and possible development of options for guideline amendments that might improve the operation of the sentencing guidelines;

(7) Resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts;

(8) Consideration of a limited number of miscellaneous guideline application issues, including issues concerning the determination of harm and the definition of ''victim'' in certain types of cases; the treatment under the guidelines of counterfeit controlled substances, human growth hormone (HGH), Prescription Drug Marketing Act of 1987 (Pub. L. 100–293) offenses, and other food and drug violations; specific concerns regarding application of the Chapter Three enhancements for abuse of trust and obstruction; and other miscellaneous priority issues coming to the Commission's attention; and

(9) Preparation and dissemination, pursuant to the Commission's authority under 28 U.S.C. 995(a)(12)–(16), of research reports on various aspects of federal sentencing policy and practice, such as updating the Commission's 1991 report to Congress entitled *Mandatory Minimum Penalties in the Federal Criminal Justice System* and studying alternatives to incarceration, including information on and possible development of any guideline amendments that might be appropriate in response to any research reports.

AUTHORITY: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E7–17799 Filed 9–10–07; 8:45 am]

BILLING CODE 2211–01–P

DEPARTMENT OF STATE

[Public Notice 5932]

Reinstatement of Statutory Debarment Under the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has lifted the statutory debarment against Equipment & Supply, Inc. (ESI) pursuant to Section 38 (g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778).

DATES: *Effective Date:* Effective July 30, 2007.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2477.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA (22 U.S.C. 2778) and Section 127.11 of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating the AECA and certain other U.S. criminal statutes enumerated at Section 38(g)(1)(A) of the AECA and Section 120.27 of the ITAR. A person convicted of violating the AECA is also subject to statutory debarment under Section 127.7 of the ITAR.

In August 2004, ESI was convicted of one count of violating Section 38 of the AECA and the ITAR. Mr. Andrew Adams, then president of ESI, separately pled guilty to one count of violating 18 U.S.C. Section 1361 by attempting to commit depredation against property manufactured for the United States. Count one of Mr. Adams' indictment (02–CR–262) alleges that he attempted to export a defense article specifically designed or modified for use in the S–65 Sikorsky military helicopter. Subsequently, the Department of State statutorily debarred ESI (see 70 FR 189, September 30, 2005). Because Mr. Adams is affiliated with the debarred entity, the presumption of denial for licenses or other State authorizations was applied to him as well.

Section 38(g)(4) of the AECA permits termination of debarment after consultation with the other appropriate U.S. agencies and after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. The Department of State has determined that ESI has taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns. Therefore, in accordance with Section 38(g)(4) of the AECA, the debarment against ESI was rescinded, effective July 30, 2007. The presumption of denial for licenses or other State authorizations applied to Mr. Adams has also been lifted. The effect of this notice is that ESI and Mr. Adams may participate without prejudice in the export of defense articles and defense services subject to Section 38 of the AECA and the ITAR.

Dated: August 22, 2007.

Stephen D. Mull,

Acting Assistant Secretary of State, Bureau of Political-Military Affairs Department of State.

[FR Doc. E7–17902 Filed 9–10–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5931]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR Parts 120 to 130) on persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act, as amended, (''AECA'') (22 U.S.C. 2778).

DATES: *Effective Date:* Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2980.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. In implementing this provision, Section 127.7 of the ITAR provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements under Section 38(g) (4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred as of the date of their AECA conviction:

(1) Leib Kohn, May 22, 2007, U.S. District Court, District of Connecticut, Case # 3:04CR125.

(2) Electro-Glass Products, July 13, 2007, U.S. District Court, District of Pennsylvania, Case# 06–00117–001.

As noted above, at the end of the three-year period following the date of conviction, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and

written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit therefrom, or have a direct or indirect interest therein.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities, and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above, and by citing the court case number provided.

Dated: August 27, 2007.

Michael W. Coulter,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E7–17905 Filed 9–10–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5906]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on Thursday, October 4, 2007, from approximately 9 a.m. to 5 p.m., and on Friday, October 5, from approximately 9 a.m. to 1 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. At this meeting the Committee will conduct its ongoing review function with respect to the Memorandum of Understanding Between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Khmer Archaeological Material; and, with respect to the Memorandum of Understanding with the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras. This meeting is for the Committee to satisfy its ongoing review responsibility of the effectiveness of agreements pursuant to the Act and will focus its attention on Article II of the MOUs. This is not a meeting to consider extension of the MOUs. Such a meeting will be scheduled in the future at which time a public session will be held.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The U.S.-Cambodia MOU, the U.S.-Honduras MOU, the designated lists of restricted categories, the text of the Act, and related information may be found at *http://exchanges.state.gov/culprop.*

The meeting on October 4–5 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: August 31, 2007.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–17871 Filed 9–10–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5930]

Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of Public Meeting

The Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on September 27, 2007, via conference call. This session will involve discussion of the Fifteenth Annual Meeting of the North Pacific Anadromous Fish Commission, to be held on October 8–12, 2007 in Valdivostok, Russia. The discussion will begin at 3:30 p.m. EST and is open to the public.

Requests for the conference call-in phone number or for further information on the meeting should be directed to Ms. Nicole M. Ricci, Office of Marine Conservation (OES/OMC), Room 2758, U.S. Department of State, Washington, DC 20520–7818. Ms. Ricci can be reached by telephone at (202) 647–1073 or by Fax (202) 736–7350.

Dated: August 28, 2007.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. E7–17879 Filed 9–10–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Agreements Filed the Week Ending July 6, 2007

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28672.

Date Filed: July 3, 2007.

Parties: Members of the International Air Transport Association.

Subject: TC12 North Atlantic, Canada, USA-Europe, Expedited Composite Resolutions, Intended effective date: July 1, 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–17847 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 6, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28657.

Date Filed: July 2, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 23, 2007.

Description: Application of McCall Aviation, Inc., requesting authority to operate scheduled passenger service as a commuter air carrier.

Docket Number: OST–2007–28675.

Date Filed: July 3, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 24, 2007.

Description: Application of Thomas Cook Airlines UK Limited, (''Thomas Cook UK'') requesting a foreign air carrier permit so that Thomas Cook UK will be able to exercise new rights made available to European air carriers pursuant to the Air Transport Agreement between the United States and the European Community and the Member States of the European Union (US–EC Agreement). Thomas Cook UK also requests an amendment to its existing exemption to the extent necessary to enable it to provide the services covered by this application while the Department evaluates Thomas Cook UK's application for a foreign air carrier permit.

Docket Number: OST–2007–27060.

Date Filed: July 5, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 25, 2007.

Description: Application of Zoom Airlines Limited (''Zoom''), requesting amendment no. 2 to its application for a foreign air carrier permit and an exemption to conduct: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point(s) behind any Member State(s) of the European Community via any point(s) in any Member State(s) and intermediate points to any point(s) in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point(s) in the United States and any point(s) in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point(s) in the United States and any other points(s); (iv) other charters pursuant Part 212; and (v) transportation authorized by any additional route or other right(s) made available to European Community carriers in the future.

Docket Number: OST–2007–28705.

Date Filed: July 6, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 2007.

Description: Application of Virgin Blue International Airlines Pty Ltd (''VBIA''), requesting a foreign air carrier permit and an exemption in order to engage in scheduled foreign air transportation of persons, property and mail between the United States and Australia to the full extent authorized by the Air Transport Agreement between the United States of the America and the Government of the Commonwealth of Australia (''the US-Australia Agreement''). VBIA also requests authority to engage in charter trips in foreign air transportation and other charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–17848 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Informational Notice Regarding Certain Substituted Specimens

AGENCY: Office of the Secretary, U.S. Department of Transportation.

SUMMARY: The Office of Drug and Alcohol Policy and Compliance (ODAPC) is taking action to rectify what may be a mischaracterization of some test results as being substituted specimens. In appropriate cases, ODAPC will reconsider the employee's original refusal result, when reported from September 1998 through May 2003, and based upon a ''substitution'' finding in a given numerical range.

FOR FURTHER INFORMATION CONTACT: Mark Snider, U.S. Department of Transportation, Office of the Secretary, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; or Telephone (202) 366–3784; or E-mail *mark.snider@dot.gov.*

SUPPLEMENTARY INFORMATION: In September 1998, Department of Health and Human Services (HHS) issued guidance (Program Document 035; September 28, 1998), for laboratories to determine when to report a urine specimen to the Medical Review Officer (MRO) as substituted. Under this guidance, a substituted specimen must have had a creatinine level of 5 mg/dL or less *and* a specific gravity less than or equal to 1.001 or greater than or equal to 1.020.

On the same date—September 28, 1998—ODAPC issued a memorandum to MROs as a companion piece to HHS's PD 035. In its memorandum, ODAPC instructed MROs to consider laboratory reported substituted results as refusals to test. There were no provisions for MRO review of substituted laboratory results.

The Department of Transportation amended part 40 (65 FR 79462), effective January 18, 2001, to put into practice, among other things, procedures for MRO review of substituted specimens. The amendment held that employees could show MROs that they had medical reasons for producing the result and present evidence that they could naturally produce specimens meeting the HHS criteria for substituted specimens. MROs could cancel a ''substituted'' result in these circumstances.

In May 2003, in response to scientific information that suggested that some people could naturally produce urine with creatinine in the 2 to 5 mg/dL range, the Department of Transportation issued an interim final rule (68 FR 31624; May 28, 2003) directing MROs not to treat these results as substituted, but as negative-dilute. Unlike part 40 procedures with other negative-dilute results however, MROs were instructed to direct the employer to have the employee return to the collection site for a directly observed collection with no prior notice. The result of the observed collection would be the result of the record for the entire testing event.

HHS revised its Mandatory Guidelines with an effective date of November 1, 2004 (69 FR 19659; April 13, 2004). Among the revisions contained in the HHS Guidelines was the requirement that laboratories modify substituted specimen criteria. Under the revised HHS Guidelines, there were, and are, no specimens with creatinine levels greater than or equal to 2 mg/dL being reported by laboratories as substituted.

Substituted results with creatinine in the 2 to 5 mg/dL range occurring between September 1998 and May 2003 were, according to the valid regulations in effect at that time, properly interpreted as refusals to test. However, in the interest of fairness the Department of Transportation is providing to individuals with such results the opportunity to have their drug test result reconsidered. If an employee's substituted drug test result is reconsidered, employers will be instructed not to report the substituted result to other DOT regulated employers requesting the employee's drug and alcohol testing history as required in 49 CFR part 40.25.

The Department of Transportation is issuing this notice to set forth the procedures for such reconsideration. According to the notice, we intend to grant reconsideration only to those employees who present credible medical documentation that demonstrates their ability to naturally produce urine specimens with creatinine concentrations equal to or greater than 2, but less than or equal to 5 mg/dL *and* a specific gravity less than or equal to 1.001 or greater than or equal to 1.020.

Employers who discover that an employee was reported to have a refusal to test as the result of a laboratory finding of creatinine concentration equal to or greater than 2, but less than or equal to 5 mg/dL, prior to May 28, 2003, should inform the employee that he or she may submit documentation to ODAPC for reconsideration. To be viewed by ODAPC as credible medical documentation, the employee would have to submit information from a licensed physician or a MRO which documents that the employee can physiologically produce urine meeting the creatinine and specific gravity criteria. ODAPC will also accept an MRO verified drug result from the employee which resulted from a Department of Transportation required drug testing event that demonstrates the employee's ability to produce a creatinine level equal to or greater than 2, but less than or equal to 5 mg/dL. This verified result must have been reported by the MRO to the employer after May 28, 2003.

The notice also provides the address that employees should send their documentation. ODAPC will carefully review every submission and will respond in writing to each employee who seeks to have his or her original refusal to test result reviewed.

Issued this 5th day of September 2007, at Washington, DC.

Jim L. Swart,

Acting Director, Office of Drug and Alcohol Policy and Compliance.

U.S. Department of Transportation
Office of the Secretary
Office of Drug and Alcohol Policy and Compliance (ODAPC)

NOTICE TO EMPLOYERS AND EMPLOYEES COVERED BY DOT DRUG AND ALCOHOL TESTING REGULATIONS

REGARDING EMPLOYMENT RECORDS OF EMPLOYEES REPORTED AS A "REFUSAL TO TEST" DUE TO THE VERIFICATION OF A SUBSTITUTED URINE SPECIMEN

We recommend that employers review past drug testing employment records, where records indicate an employee refused to test before May 28, 2003.

For substituted specimens that were reported as refusals to test prior to May 28, 2003, employers should be aware of the following:

Before May 28, 2003: Specimens with creatinine concentrations equal to or greater than 2, but less than or equal to 5 mg/dL [hereafter, "2-5 mg/dL range"] and a specific gravity of less than or equal to 1.001 or greater than or equal to 1.020 were considered to be substituted urine samples and therefore reported by the MRO as refusals to test.

May 28, 2003: An interim final rule change required that any test results meeting these criteria must be considered dilute specimens warranting recollections under direct observation. They would no longer be considered refusals to test. The preamble for this interim final rule stated that if the employer was notified of a substituted test result prior to May 28, 2003, the employer should continue to consider the result a refusal to test.

Why the rule changed: The U.S. Department of Transportation (DOT) became aware that a small number of people could naturally produce specimens with creatinine within this 2-5 mg/dL range.

What this means: That in a rare number of cases, individuals determined to have substituted urine specimens, and which were ultimately reported as a refusal to test, might not have substituted their urine samples. The purpose of this notice is to provide employers with accurate information for interpreting employment records regarding substituted / refusal test results prior to May 28, 2003. DOT would like to see employers make informed decisions.

Warning: This information applies only to a small number of tests, and most refusals to test determinations prior to May 28, 2003 will remain applicable.

Many responsible employers look back farther than the DOT rules require in evaluating whether to hire someone. While regulations require employers to review two or three or even five years of past drug and alcohol testing records (the length of time depends on type of your transportation industry) when an employee applies for or transfers into a safety sensitive position, DOT believes it is important for employers to take this notice into consideration when reviewing those records.

What's the remedy: The DOT will reconsider an employee's drug test result if each of the following conditions are met:

1. The substitution / refusal to test determination was reported before May 28, 2003;

2. The test had a creatinine concentration in the 2-5 mg/dL range and a specific gravity of less than or equal to 1.001 or greater than or equal to 1.020; and

3. There exists credible medical documentation that the individual naturally produces urine specimens with creatinine concentrations and specific gravity in these ranges.

> **NOTE:** One example of what the DOT could consider credible medical documentation could be a controlled medical examination during which the individual produces the same result during a collection under direct observation. Another could include any subsequent required DOT drug test in which the individual demonstrated the ability to produce another urine specimen with creatinine concentration in the 2-5 mg/dL range and a specific gravity of less than or equal to 1.001 or greater than or equal to 1.020.

What can employees do: If you meet the above criteria, you should send documentation to DOT thoroughly addressing the above three points. Send your request to:

U.S. Department of Transportation
Office of the Secretary
Office of Drug and Alcohol Policy and Compliance
ATTN: Mark Snider [ODAPC]
1200 New Jersey Avenue, SE
Washington, DC 20590

What can employers do: If you discover through a background check or other means that a current employee or an applicant or employee who is being hired or is transferring into a safety-sensitive function was reported as refusing due to having a substituted drug test result before May 28, 2003, you may choose one or more of the following:

If you are a current or previous employer:

1. You may inform employees that the DOT can reconsider their substitution / refusal results if they meet the three conditions outlined above.

2. When you receive a 40.25 inquiry on a previous employee and have written documentation that the DOT reconsidered the employee's original refusal result, you should not report the refusal result on this test to the requesting employer.

If you are a gaining employer:

1. You may permit the employee to perform safety-sensitive functions if he or she has successfully completed the DOT return-to-duty process.

2. You may inform the employee that he or she may submit documentation (see above) regarding his or her substituted test result to the DOT for reconsideration. You may permit the employee to perform safety-sensitive functions upon receipt of DOT documentation that the employee has been shown to naturally produce creatinine concentrations in the 2-5 mg/dL range and a specific gravity of less than or equal to 1.001 or greater than or equal to 1.020.

3. If after reconsideration ODAPC provides written documentation stating that the original results should not be considered substituted, you should attach that written documentation to the original substituted drug test result, as proof that the test should not be considered as substituted.

NOTE: Under DOT regulations, all decisions to hire or fire an employee are left to the employer, but these options are provided because DOT would like employers to make the most informed decisions possible. DOT does NOT require that employers hire or fire any specific individual.

Our review will be on a case-by-case basis. Following our review, the DOT and the DOT Agencies will take appropriate action to notify employees of our determinations.

NOTE: This Informational Notice is time limited, and submissions must be sent to the DOT no later than six months from the date of publication of this notice in the Federal Register.

For more information, contact Mark Snider by phone at 202.366.3784 or by Email at mark.snider@dot.gov; or visit our website at: www.dot.gov/ost/dapc.

[FR Doc. 07–4428 Filed 9–10–07; 8:45 am]
BILLING CODE 4910–9X–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28850]

Agency Information Collection Activities; Revision of an Approved Information Collection: Driver Qualification Files

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This collection, entitled ''Driver Qualification Files,'' accounts for the information that motor carriers must obtain and maintain on the qualifications of the commercial motor vehicle (CMV) drivers they employ. On May 23, 2007, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comments were received.

DATES: Please send your comments by October 11, 2007. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Docket No. FMCSA–2007–28850. You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention: DOT/FMCSA Desk Officer.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division. Telephone: 202–366–4235; e-mail *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Driver Qualification Files.

OMB Control Number: 2126–0004.

Type of Request: Revision of a currently approved collection.

Respondents: Motor carriers; drivers.

Estimated Number of Respondents: 7 million.

Estimated Time per Response: An average of 28 minutes.

Expiration Date: September 30, 2007.

Frequency of Response: The principal obligations of these rules are imposed on motor carriers when considering a driver for employment, and on CMV drivers, when applying for employment.

These obligations arise irregularly because they are associated with the hiring process. This collection also imposes certain annual obligations on motor carriers and employee-drivers.

Estimated Total Annual Burden: 3,254,580 hours. FMCSA arrives at this estimate through calculation of the time involved with each of the requirements of the driver qualification rules including those pertaining to the hiring of a CMV driver by a motor carrier and the safety performance history of the applicant-driver.

Background

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2834 (October 30, 1984)) requires the Secretary of Transportation to issue regulations pertaining to CMV safety. These regulations, also issued under the authority provided by 49 U.S.C. 504, 31133, 31136, and 31502, require motor carriers to maintain a driver qualification file on each of their CMV drivers. The rules require a motor carrier to obtain and maintain specified information concerning the qualifications of each driver to operate a CMV in interstate commerce. The CMV driver is often required to produce the required information. The majority of the information is collected during the process of hiring the CMV driver and during annual reviews. This information is available to FMCSA investigators to substantiate the qualifications of drivers to operate a CMV safely in interstate commerce. A qualified driver means fewer crashes.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: August 31, 2007.

Michael S. Griffith,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E7–17805 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28630]

Agency Information Collection Activities; New Information Collection: Share the Road Safely Outreach Program Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The proposed ICR will be used to collect information on commercial motor vehicle (CMV) and passenger car drivers' awareness of the Share the Road Safely (STRS) safety messages and activities. This information collection will aid FMCSA in developing future Share the Road Safely initiatives by surveying and examining driver awareness of sharing the road safely by using safety messages and activities.

DATES: We must receive your comments on or before November 13, 2007.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the FMCSA Docket Number FMCSA–2007–28630.

- *Web site: http://dms.dot.gov.* Follow instructions for submitting comments to the Docket.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Docket: For access to the Docket Management System (DMS) to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The DMS is available electronically 24 hours each day, 365 days each year. If you want notification of receipt of your comments, please include a self-addressed, stamped envelope, or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Brian Ronk, Office of Outreach and Development, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–1072, or e-mail *brian.ronk@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purpose of this study is to assess the awareness of licensed drivers regarding Share the Road Safely messages. The study will assist FMCSA in developing future STRS campaign messages and identifying target audiences and distribution strategies. The data will be collected through a telephone survey. Results of the study will not be published, but used for internal research purposes by FMCSA to assess its outreach activities and identify opportunities to help raise the public's awareness of driving safely in, or around, large trucks and vehicles. A follow-up survey will be conducted two years after the initial data collection and compared against the results from the baseline assessment.

Title: Share the Road Safely Outreach Program Assessment.

OMB Control Number: 2126–XXXX.

Type of Request: New collection.

Respondents: Public/licensed drivers.

Estimated Number of Respondents: 1,500.

Estimated Time per Response: The estimated average burden per response is 10 minutes.

Expiration Date: N/A.

Frequency of Response: Other. The information will be collected during the first year of approval and again two years following the initial data collection.

Estimated Total Annual Burden: 250 hours [1,500 responses × 10 minutes/60 minutes per response = 250].

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including but not limited to: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/ or included in the request for OMB's clearance for this information collection.

Issued on: August 31, 2007.

Michael S. Griffith,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E7–17806 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–27393]

Agency Information Collection Activities; Request for Comments; Notice of Intent To Survey Motor Carriers Operating Small Passenger-Carrying Commercial Motor Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments; reopening of comment period.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) is reopening the comment period on its April 6, 2007, notice and request for comments concerning a proposed survey of motor carriers operating small-passenger-carrying commercial motor vehicles to obtain additional feedback from motor carriers and interested parties.

DATES: Comments must be submitted on or before October 11, 2007. OMB must receive your comments by this date to act quickly on the request.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: DOT/FMCSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Federal Motor Carrier Safety Administration, DOT, Office of Enforcement and Compliance, Commercial Passenger Carrier Safety Division, 1200 New Jersey Avenue, SE., Washington, DC 20590, phone (202) 366–5763, fax (202) 366–3621, e-mail *peter.chandler@dot.gov.* Office hours are from 8 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2007, FMCSA published a notice in the **Federal Register** (72 FR 17218), to announce that its Information Collection Request (ICR) for collecting data about motor carriers who operate small passenger-carrying commercial motor vehicles had been sent to the Office of Management and Budget (OMB) for review and approval. In the April 6th notice, the agency imposed a 30-day comment period for interested parties to comment on the survey. The comment period ended on May 7, 2007.

Purpose of Reopening the Comment Period

The comment period is being reopened to allow more time for the public to comment on this proposed survey. FMCSA is committed to obtaining information that will provide insight into the common safety and regulatory compliance challenges facing motor carriers with small passenger-carrying CMV operations. Such information provided in the comments will also be utilized by FMCSA to develop educational outreach initiatives for the affected industry segment. It is appropriate that FMCSA connect with and inform this segment of the motor carrier industry of its regulatory compliance responsibilities before implementing an enforcement program. Any information obtained will help identify specific areas of regulatory compliance that are problematic for this industry segment. The survey will also obtain needed insight about how to best provide and distribute information to the affected industry segment.

Issued on: September 4, 2007.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E7–17808 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28523]

Agency Information Collection Activities; Revision of an Approved Information Collection: Request for Revocation of Authority Granted

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This information collection notifies the FMCSA of a voluntary request by a motor carrier, freight forwarder, or property broker to amend or revoke its registration of authority granted. On April 3, 2007, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comments were received by the agency.

DATES: Please send your comments by October 11, 2007. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention: DOT/FMCSA Desk Officer.*

FOR FURTHER INFORMATION CONTACT: Stephanie Haller, Supervisory Transportation Specialist, Commercial Enforcement Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–385–2362; e-mail *stephanie.haller@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Revocation of Authority.

OMB Control Number: 2126–0018.

Type of Request: Revision of a currently-approved information collection.

Form Number: OCE–46.

Respondents: Motor carriers, freight forwarders and property brokers.

Estimated Number of Respondents: 3,250.

Estimated Time per Response: 15 minutes.

Expiration Date: September 30, 2007.

Form: OCE–46.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 813 hours [3,250 annual Form OCE–46 filers × 15 minutes/60 minutes per filing = 812.5 hours, rounded to 813 hours].

Background: Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation (Secretary) to promulgate regulations governing the registration of for-hire motor carriers of regulated commodities (49 U.S.C. 13902), surface transportation freight forwarders (49 U.S.C. 13903), and property brokers (49 U.S.C. 13904). The FMCSA carries out this registration program under authority delegated by the Secretary. Under 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary determines appropriate by regulation. Section 13905(c) of title 49, U.S.C., grants the Secretary the authority to amend or revoke a registration at the registrant's request. On complaint, or on the Secretary's own initiative, the Secretary may also suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with the regulations, an order of the Secretary, or a condition of its registration.

Form OCE–46 is used by transportation entities to voluntarily apply for revocation of their registration authority in whole or in part. FMCSA uses the form to seek information concerning the registrant's docket number, name and address, and the reasons for the revocation request.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: August 31, 2007.

Michael S. Griffith,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E7–17812 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27389]

Agency Information Collection Activities; Notice of Request for Comments on a New Information Collection: FMCSA COMPASS Portal Customer Satisfaction Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for information; Correction.

SUMMARY: The FMCSA published a notice in the **Federal Register** on April 19, 2007, requesting comments on the renewal of a currently approved information collection. The subject line in the notice contained an incorrect type of information collection request for which comments were received.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Coleman, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone: (202) 366–4440; fax: (202) 493–0679; e-mail: *bill.coleman@dot.gov*. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Correction

In the information collection document under Docket No. FMCSA–2007–27389, in the April 19, 2007, **Federal Register** [72 FR 19753], correct the **SUBJECT** section, text to read:

Notice of Request for Comments on a New Information Collection: * * *

Issued on: August 31, 2007.

Michael S. Griffith,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E7–17813 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities; Notice and Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 5, 2007 (72 FR 36750).

DATES: Comments must be submitted on or before October 11, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On July 5, 2007, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 72 FR 36750. FRA received one comment in response to this notice.

The letter came from Mr. John P. Tolman, Vice President and National Legislative Director of the Brotherhood of Locomotive Engineers and Trainmen (BLET). BLET, a Division of the Rail Conference of the International Brotherhood of Teamsters, is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on all Class I railroads. BLET also represents operating and other employees on numerous Class II and Class III railroads. In his comments, Mr. Tolman noted the following:

* * * the proposed information collection activity would have a significant impact on our members. For the reasons set forth below, BLET strongly supports and urges OMB to approve the request.

Recognizing the potential safety benefit of C^{3}RS—as evidenced by successes in similar programs in the aviation and health care industries—the BLET was a founding member of the C^{3}RS National Planning Committee, and is a member of the successor C^{3}RS National Steering Committee. We have

participated in C³RS activities at all levels in the industry, and have supported implementation of C³RS in several areas. See, *e.g.*, 71 FR 56217–56219.

The breath of voluntary acceptance of the C³RS process throughout the railroad industry will depend upon the extent of demonstrable evidence that the process improves railroad safety. Accordingly, a thorough and independent evaluation of C³RS is an essential element of the process. The evaluation, as proposed, is both necessary for FRA to properly execute its functions, and properly structured so as to achieve its stated purpose. We wholeheartedly urge OMB to approve the request, and look forward to participating in this element of the C³RS process.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

Title: Confidential Close Call Reporting System Evaluation-Related Interview Data Collection.

OMB Control Number: 2130–NEW.

Type of Request: New collection.

Affected Public: Rail employees and key non-railroad stakeholders.

Abstract: In the U.S. railroad industry, injury rates have been declining over the last 25 years. Indeed, the industry incident rate fell from a high of 12.1 incidents per 100 workers per year in 1978 to 3.66 in 1996. As the number of incidents has decreased, the mix of causes has also changed toward a higher proportion of incidents that can be attributed to human and organizational factors. This combination of trends—decrease in overall rates but increasing proportion of human factors-related incidents—has left safety managers with a need to shift tactics in reducing injuries to even lower rates than they are now.

In recognition of the need for new approaches to improving safety, FRA has instituted the Confidential Close Call Reporting System (C³RS). The operating assumption behind C³RS is that by assuring confidentiality, employees will report events which, if dealt with, will decrease the likelihood of accidents. C³RS, therefore, has both a confidential reporting component, and a problem analysis/solution component. C³RS is expected to affect safety in two ways. First, it will lead to problem solving concerning specific safety conditions. Second, it will engender an organizational culture and climate that supports greater awareness of safety and a greater cooperative willingness to improve safety.

If C³RS works as intended, it could have an important impact on improving safety and safety culture in the railroad industry. While C³RS has been developed and implemented with the participation of FRA, railroad labor, and railroad management, there are legitimate questions about whether it is being implemented in the most beneficial way, and whether it will have its intended effect. Further, even if C³RS is successful, it will be necessary to know if it is successful enough to implement on a wide scale. To address these important questions, FRA is implementing a formative evaluation to guide program development, a summative evaluation to assess impact, and a sustainability evaluation to determine how C³RS can continue after the test period is over. The evaluation is needed to provide FRA with guidance as to how it can improve the program, and how it might be scaled up throughout the railroad industry.

Program evaluation is an inherently data driven activity. Its basic tenet is that as change is implemented, data can be collected to track the course and consequences of the change. Because of the setting in which C³RS is being implemented, that data must come from the railroad employees (labor and management) who may be affected. Critical data include beliefs about safety and issues related to safety, and opinions/observations about the operation of C³RS.

The proposed study is a five-year demonstration project to improve rail safety, and is designed to identify safety issues and propose corrective action based on voluntary reports of close calls submitted to the Bureau of Transportation Statistics. Because of the innovative nature of this program, FRA is implementing an evaluation to determine whether the program is succeeding, how it can be improved and, if successful, what is needed to spread the program throughout the railroad industry. Interviews to evaluate the close call reporting system will be conducted with two groups: (1) Key stakeholders to the process (*e.g.*, FRA officials, industry labor, and carrier management within participating railroads); and (2) Employees in participating railroads who are eligible to submit close call reports to the Confidential Close Call Reporting System. Different questions will be addressed to each of these two groups. Interviews will be semi-structured, with follow-up questions asked as appropriate depending on the respondent's initial answer.

The confidentiality of the interview data is protected by the Privacy Act of 1974. FRA fully complies with all laws pertaining to confidentiality, including the Privacy Act. Thus, information obtained by or acquired by FRA's contractor, the Volpe Center, from key stakeholders and railroad employees will be used strictly for evaluation purposes. None of the information that might be identifying will be disseminated or disclosed in any way. In addition, the participating railroad sites involved will require Volpe to establish a non-disclosure agreement that prohibits disclosure of company confidential information without the carrier's authorization. Also, the information is protected under the Department of Transportation regulation Title 49 CFR Part 9,which is in part concerned with the Department involvement in proceedings between private litigants. According to this statute, if data are subpoenaed, Volpe and Volpe contractors can not ''provide testimony or produce any material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or because of that employee's official duty status'' unless authorized by agency counsel after determining that, in legal proceedings between private litigants, such testimony would be in the best interests of the Department or that of the United States Government if disclosed. Finally, the name of those interviewed will not be requested.

Annual Estimated Burden Hours: 267 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary

for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 5, 2007.

D. J. Stadtler,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E7–17809 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Electronic Remote Authority Delivery Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of interpretation.

SUMMARY: FRA is issuing this notice of interpretation to inform interested parties of its position regarding the implementation of digital electronic remote authority delivery systems that permit authorized users to electronically request, obtain, and release authorities to occupy controlled tracks. These activities are classified as safety-critical functions, and may interact with the functions of train control systems and dispatching procedures. Depending on the functionality and complexity of these systems, railroads seeking to implement digital electronic remote authority systems may be required to comply with Title 49 of the Code of Federal Regulations (CFR) Part 236, Subpart H (Subpart H). This notice classifies digital electronic authority delivery systems based on their functionality and identifies categories of systems that are subject to compliance with the requirements of Subpart H.

ADDRESSES: You may submit comments to Thomas McFarlin, Staff Director, Signal and Train Control Division, or Olga Cataldi, Senior Electronic Engineer, FRA Office of Safety Assurance and Compliance, by facsimile (202–493–6216) or e-mail (*thomas.mcfarlin@dot.gov*) or (*olga.cataldi@dot.gov*). Comments may also be submitted to Kathy Shelton, FRA Office of Chief Counsel, by facsimile (202–493–6068) or e-mail (*kathryn.shelton@dot.gov*).

FOR FURTHER INFORMATION CONTACT: Thomas McFarlin, Staff Director, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW., Washington, DC, 20590 (telephone: (202) 493–6203), e-mail (*thomas.mcfarlin@dot.gov*); Olga Cataldi, Senior Electronic Engineer, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW., Washington, DC, 20590 (telephone: (202) 493–6321), e-mail (*olga.cataldi@dot.gov*); or Kathy Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: (202) 493–6063), e-mail (*kathryn.shelton@dot.gov*).

SUPPLEMENTARY INFORMATION:

Background

With technical advances and the wide availability of wireless communication technology, a number of Class I and short line railroads have been developing and, for the past several years, implementing a variety of software-based applications for the electronic delivery of digital track authorities to roadway workers. Software-based digital communication between railroad workers and the dispatch center has proven to be an effective alternative to voice communication with the dispatcher via radio. Digital communications may potentially result in significant increases in safety by eliminating delivery or read back errors associated with voice communications. Digital communications may also increase the effectiveness of railroad operations and track maintenance resources utilization by significantly decreasing the time associated with obtaining and releasing track authorities. These potential operational and safety benefits are prompting railroads to extend the use of wireless data communication to digital transmission of track warrants to trains. Further, railroads are seeking to extend the functionalities associated with the digital communication of authorities to roadway workers and train crews to include the auto-generation and issuance of authorities, excluding any involvement of the dispatcher.

The regulations contained in 49 CFR Part 214, Subpart C, which currently govern the delivery of authorities for exclusive track occupancy to roadway workers, do not specifically address digital communication between the dispatcher and the employee in charge. Currently, 49 CFR 214.321(a)(1) requires that all authorities issued to a roadway worker in charge be given by the dispatcher or control operator who controls train movement on that track.

The digital delivery of movement authorities to train crews is addressed in 49 CFR Part 236, Subpart H. This set of regulations prescribes the minimum safety standards for the development and operation of processor-based signal and train control systems. As stated in the preamble to Subpart H, FRA purposely left the term ''train control'' undefined, as advances in technology supporting these systems would make any definition of the term ''train control'', or any list of train control systems and associated features, ''undoubtedly outdated'' in a relatively short period of time. *See* 70 FR 11052, 11066. Therefore, the requirements contained in Subpart H apply to ''safety-critical products'', which include systems that provide safety-relevant information on which crews are expected to rely. *See* 49 CFR 236.901. However, FRA emphasized in the preamble to the rule that ''[o]ther systems providing safety-relevant information on which crews are expected to rely will also fall within this term''. *See* 70 FR 11052, 11066. In regard to dispatching systems, a centralized computer-aided train dispatching system being a part of an ''office system'' may also be subject to Subpart H compliance, if ''it performs safety-critical functions within, or affects the safety performance of, a new or next generation train control system.'' *See* 49 CFR 236.911(c).

FRA recognizes that its current regulations do not clearly address the auto-generation and digital communication of authorities to roadway workers and locomotive engineers. FRA is currently taking measures to augment existing regulations to more clearly address these functionalities. For example, FRA, with the participation of the Railroad Safety Advisory Committee, has explored appropriate conditions for the digital transmission of authority to a roadway worker in charge. In light of these discussions, FRA expects to include specific concepts in a notice of proposed rulemaking for revision of 49 CFR Part 214, Subpart C. Further, FRA has been in discussion with the Association of American Railroads regarding the need for general standards to ensure the effectiveness and security of wireless communications particularly

in the field of train control. Pending the issuance of regulations and other actions in this area, FRA believes that it is both necessary and appropriate to clarify the existing regulatory requirements applicable to the auto-generation and digital delivery of authorities. The following discussion is intended to provide that clarification.

Classification of Digital Electronic Remote Authority Delivery Systems

Software-based digital electronic remote authority delivery systems can be classified based on their purpose, and the level of dispatcher involvement as follows:

By purpose:

• Roadway Worker Protection (RWP) systems (deliver track occupancy authorities to a roadway worker in charge).

• Remote Authority systems (deliver track occupancy authorities to a roadway worker in charge and movement authorities to a train crew).

By dispatcher's role:

• Dispatcher generated (or dispatcher confirmed) authorities

• Automatically generated authorities (these authorities may be generated by the system itself, by a computer-aided train dispatching system (CAD), or as part of a positive train control system).

Remote Authority and Roadway Worker Protection systems can both be used in signaled and non-signaled (dark) territories. These systems can operate as either an autonomous dispatching-type system or as an overlay to an existing method of operation. Based on the classification given above, FRA has identified four distinct categories of digital electronic remote authority delivery system functionalities:

1. Electronic transmission of authorities to roadway workers with dispatcher's electronic confirmation;

2. Electronic transmission of authorities to train crews with dispatcher's electronic confirmation;

3. Automatic generation and electronic transmission of the authorities to roadway workers without dispatcher's involvement; or,

4. Automatic generation and electronic transmission of the authorities to train crews without dispatcher's involvement.

While FRA fully supports the railroad industry's desire to implement digital electronic remote authority delivery systems, FRA also believes that to the extent such systems execute the necessary logic to generate valid mandatory directives or roadway work authorities, they are functionally forms of train control subject to Subpart H. Further, digital pathways embedded in conventional signal and train control systems, including communication-based train control systems, are relevant subsystems deserving of consideration within the context of Subpart H review. In the event of malfunction of any of these types of systems, FRA would expect each employing railroad to have operating rules in place that address reversion to voice or written delivery of authorities by the dispatcher, consistent with any applicable existing regulations.

The following discussion provides clarification on the applicability of FRA regulatory requirements to each category of digital electronic remote authority delivery systems.

Systems Performing Electronic Transmission of Authorities to Roadway Workers With Dispatcher's Electronic Confirmation

The software-based application (or processor-based system) belongs to this category if:

1. It serves as an autonomous office (dispatching) system in the absence of a CAD system, or as an auxiliary system interfaced with an existing CAD system, and is used exclusively for issuing authorities to roadway workers to occupy controlled tracks;

2. It allows the employee in charge to request, obtain, and release the authority to occupy a controlled track through wireless digital communication with the dispatcher or control operator in charge of the track;

3. Upon receipt of an electronically transmitted request from a roadway worker to occupy track, the authority is generated by the dispatcher or automatically by the application system (or by CAD) and is electronically transmitted by the application system accompanied by electronic confirmation of the dispatcher;

4. The dispatcher holds ultimate responsibility for the proper issuance of authority to roadway workers and for maintaining proper records of track occupancy by other authorized users; and,

5. The system server retains electronic records of roadway workers' requests for authority and dispatcher's entries of all authority granted by the dispatcher, including those issued to trains.

Such systems perform functions described in 49 CFR Part 214, although that part currently does not address means of authority delivery. These systems are not, however, subject to Subpart H because they only provide electronic transmission of track occupancy authority. The generation and release of the authority remains the responsibility of the dispatcher, as currently required by 49 CFR 214.321(a). Once the revision of Part 214 is completed, these systems may be subject to new requirements regarding electronic delivery of authorities to roadway workers in charge (related to security and authentication of the digital transmission).

Systems Performing Electronic Transmission of Authorities to Trains With Dispatcher's Electronic Confirmation

The definition of this category of processor-based applications (or computer-based systems) coincides with the definition given above for RWP systems, except the delivery of authority is extended to trains.

FRA has determined that the electronic delivery of movement authority to trains is a safety-critical function pertaining to train control systems. If the dispatcher is involved in the process of generating the authority or is confirming the CAD system-generated authority, and the closed-loop communication occurs between the dispatcher and train crew, FRA recognizes that the regulatory requirements for systems delivering authorities to trains should be the same as for those delivering authorities to roadway workers. FRA further recognizes that, if the system includes functions related to commanding or warning crews based on changing field conditions (e.g., in the same way a cab signal would ''drop'' if a circuit were deenergized by equipment rolling out on the main line), then the system is a train control application.

FRA utilizes the following criteria in determining the applicability of Subpart H to systems of this category:

1. If the content of electronic messages transmitted to a train crew are limited exclusively to movement authorities and other mandatory directives, the application system is exempt from compliance with Subpart H.

2. If the content of electronic messages transmitted to a train crew, in addition to movement authorities and other mandatory directives, contain warning or other enforcement commands impacting train handling, the application system must comply with Subpart H.

3. If the communication subsystem embedded in any new train control system is an integral part of that system, it is subject to Subpart H requirements.

FRA encourages railroads to arrange digital systems which communicate safety-critical information so that security of the messages is maintained and authentication of those issuing and

acknowledging mandatory directives is established. Although use of digital transmission has the advantage of accuracy (avoidance of misunderstandings) and efficiency, insecure transmissions and lack of proper authentication could introduce new risks. FRA expects that, as this technology fully matures, industry standards will address these needs even more suitably than at present within an interoperable framework.

If Subpart H is applicable, the railroad shall submit an RSPP and PSP required by 49 CFR 236.905 and 236.907.

Systems Performing Automatic Generation and Electronic Transmission of the Authorities to Roadway Workers Without Dispatcher's Involvement

The processor-based application (or computer-based system) belongs to this category if:

1. It serves as an autonomous office (dispatching) system, in the absence of a CAD system, or as an auxiliary system interfaced or integrated with an existing CAD system, and is used exclusively for issuing authorities to roadway workers to occupy controlled tracks;

2. It allows the employee in charge to request, obtain, and release the authority to occupy a controlled track through wireless digital communication without the dispatcher's concurrence;

3. Upon receipt of an electronically transmitted request from a roadway worker to occupy track, the authority is generated automatically by the CAD system (or application system) and is electronically transmitted by the application system without the dispatcher's concurrence; and

4. The system server retains electronic records of roadway workers' requests for authority and all granted authorities, including those issued to trains.

Such systems are subject to compliance with Subpart H. The delivery of track occupancy authority to roadway workers without the dispatcher's involvement is considered a safety-critical function in the same way that control of train movements is safety-critical. This constitutes a basis for these systems to comply with Subpart H requirements. Railroads shall submit an RSPP and PSP in accordance with 49 CFR 236.905 and 236.907 prior to implementing any such system. Relief is also required from the requirements of Part 214, Subpart C, related to dispatcher involvement in the issuance of roadway work authorities.

Systems Performing Automatic Generation and Digital Transmission of Authorities to Trains Without Dispatcher's Involvement

The definition of this category of processor-based applications (or computer-based systems) coincides with the definition given in a previous section for RWP systems, except that the delivery of authorities is extended to trains.

Systems of this category are subject to compliance with Subpart H because the delivery of track occupancy authority to roadway workers and trains without dispatcher involvement is considered a safety-critical function of a train control system. Therefore, railroads shall submit an RSPP and PSP in accordance with 49 CFR 236.905 and 236.907 prior to implementing any such system.

Those interested in implementing systems that automatically generate mandatory directives, roadway work authorities, or other instructions or commands (executed by persons or equipment) bearing directly on the safety of train operations, are respectfully referred to Appendix C of 49 CFR Part 236, which outlines safety assurance criteria and processes that are relevant to such an undertaking.

FRA seeks comments on this notice from interested parties. Please refer to the Addresses section for additional information regarding the submission of comments.

Issued in Washington, DC on September 4, 2007.

Jo Strang,

Associate Administrator for Safety.

[FR Doc. E7–17800 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2007–03

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory; Railroad Bridge Safety—Explanation and Amplification of FRA's ''Statement of Agency Policy on the Safety of Railroad Bridges.''

SUMMARY: FRA is issuing Safety Advisory 2007–03 recommending that owners of track carried on one or more railroad bridges adopt safety practices to prevent the deterioration of railroad bridges and reduce the risk of casualties from train derailments caused by structural failures of such bridges.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Ave., NW., RRS–15, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6320); or Sarah Grimmer, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6390).

SUPPLEMENTARY INFORMATION: FRA published its ''Statement of Agency Policy on the Safety of Railroad Bridges'' (''Policy'') on August 30, 2000 (65 FR 52667). The Policy Statement, included in the Federal Track Safety Standards (Title 49, Code of Federal Regulations, Part 213) as Appendix C, includes non-regulatory guidelines based on good practices which were prevalent in the railroad industry at the time the Policy was issued.

FRA has examined reports from January 1, 1982 through December 31, 2006 of 52 train accidents caused by the catastrophic structural failure of railroad bridges, an average of two per year. During that twenty-five year period, two people were injured and no fatalities were attributed to structural bridge failure. In addition, since the examination of those reports in April of 2006, FRA has learned of four instances where lack of adherence to the guidelines in the Bridge Safety Policy resulted in trains operating over structural deficiencies in steel bridges that could very easily have resulted in serious train accidents. It should be noted that FRA uses the term ''catastrophic failure'' to describe an incident in which a bridge collapses or directly causes a train accident. A simple ''bridge failure'' is a situation in which a bridge is no longer capable of safely performing its intended function.

During the past sixteen months, three train accidents occurred due to catastrophic structural failures of bridges, all of which were timber trestles. The most recent bridge-related train accident occurred on the M&B Railroad near Myrtlewood, Alabama, where a train of solid-fuel rocket motors derailed when a timber trestle railroad bridge collapsed under the train. Several cars, including one car carrying a rocket motor, rolled onto their sides and six persons were injured. FRA has also recently evaluated the bridge management practices of several small railroads, and found that some had no bridge management or inspection programs whatsoever.

FRA therefore issues this non-regulatory Safety Advisory to supplement and re-emphasize the

provisions of the Policy on the Safety of Railroad Bridges. FRA recognizes the potential impact of regulations related to structural integrity of railroad bridges. However, should these serious incidents and failures continue and FRA determines that the responsible track owners are not conforming to accepted engineering principles and procedures, including those outlined herein and in the Bridge Safety Policy, FRA might have to change course and develop a regulatory approach.

FRA Bridge Safety Evaluations

FRA has been evaluating bridge management practices on a representative sampling of the Nation's railroads, including class I, II and III freight railroads, and passenger carriers. The evaluations generally compare a railroad's program with the guidelines in the FRA Bridge Safety Policy, and include observations of individual bridges to determine their general condition, as well as the accuracy of the railroad's inspection reports.

Most large railroads generally conform to the FRA guidelines, but FRA has discovered instances where management had not adequately evaluated or addressed critical items delineated in railroad bridge inspection reports before they developed into critical failures or near-failures. Many of the smaller railroads evaluated also conformed generally to the guidelines, but a considerable number either fell short by a large degree, or showed absolutely no evidence of bridge inspection, management or maintenance.

This Safety Advisory

As serious gaps exist between the FRA Bridge Safety Guidelines and the actual practices on many railroads, and because FRA has discovered some extremely serious hazards as a result, FRA is issuing this Safety Advisory. Its purpose is to explain and amplify the provisions of the Bridge Safety Guidelines, and to discuss and make recommendations concerning some points in addition to the guidelines that FRA has determined are critical to bridge safety.

Conformance with the FRA Bridge Safety Guidelines

Certain provisions of the FRA Bridge Safety Guidelines are critical from the standpoint of immediate safety to the development and implementation of a railroad's bridge management program. These points are reiterated and expanded below.

Responsibility for the Safety of Railroad Bridges

FRA has specified that the owner of the track carried by a bridge is responsible for the safety of trains that operate over that track, and therefore the track owner must know that the track is being adequately supported by the bridge. Even though the Guidelines are published as an appendix in the Federal Track Safety Standards for convenience, that does not imply that the track owner need only assure compliance with the minimum requirements of the Track Standards. Track conditions that are well within the limits of the Track Standards might also be valid indications of imminent bridge failure.

The owner of the track supported by a bridge is fully responsible for the safety of trains that operate over that bridge, regardless of any agreements, or division of ownership or maintenance expense, to the contrary. The track owner must be able to control, and restrict if necessary, the movement of trains on any segment of its track, including the track on a bridge.

Capacity of Railroad Bridges, and Bridge Loads

The capacity of a bridge, and the actual loads that it carries, are so interrelated that they must be considered together.

The load a bridge carries directly affects its serviceable life and safety. These loads, and various external influences, impose forces on the various components of the bridge. These components, in turn, are each capable of carrying a certain level of forces without failing or rapidly deteriorating.

Every properly designed railroad bridge is configured and proportioned so that it will safely handle the forces developed by a certain train load, together with effects associated with that load. That load, termed the ''design load,'' is the general basis for determining the safe capacity of a bridge. The design load is, most typically, a series of wheel loads of defined weight, with spacings between every pair of wheels of a defined distance. The bridge must also be capable of carrying its own weight, the weight of other objects permanently attached to the bridge, such as signals and pipes, and other external forces, such as wind and stream flow.

An engineer determining the capacity of a bridge, a process termed ''rating,'' is fortunate if the original design documents of the bridge are available, together with documentation of repairs, modifications and inspections. In that case, the design load can be compared with the original dimensions of the bridge and its components, including inspection records that indicate the actual condition of the components, and the bridge can be given a rating in terms of a common standard series of train loads. Absent the design documents for a bridge, an engineer should make a detailed inspection of every member of the bridge to record its actual dimensions, material, and condition.

Every train moving over a bridge causes forces to be developed in the components of the bridge. The magnitude of those forces in each component are determined by the weight carried on each wheel, the spacing of the wheels within the train, and associated effects, such as impact, rocking, and lateral forces. The effect of the actual load on a bridge can be associated with the effect of the rated load, and an engineer can determine if the proposed or actual loads are within the limits of the rated load, given any operating conditions placed on an actual load.

Several critical points are associated with making a proper determination of bridge capacities and loads. At a minimum, each track owner should take the following actions:

1. Ensure that a professional engineer competent in the field of railroad bridge engineering, or someone under his or her supervision, determines bridge capacity;

2. Maintain a record of the safe capacity of every bridge which carries its track;

3. Enforce a procedure that will ensure that its bridges are not loaded beyond their capacities; and

4. Ensure that regular comprehensive inspections are conducted.

Bridge ratings will change with time, and will seldom improve. Regular comprehensive inspections are vital to maintaining valid bridge ratings and to performing timely bridge maintenance and repairs.

The rating of timber trestles is a less exact process than the rating of steel and concrete bridges. Timber bridge components can vary widely in their composition, quality and condition. The inherent redundancy in timber trestles will partly compensate for a single sub-standard component, but the good parts which pick up more than their share of load from the weak member will degrade at a more rapid rate. It is essential that a weak timber member be repaired or replaced in a reasonable time; however, while it is still in place in the bridge, it and its surrounding members should be given extra attention with more frequent, detailed inspections.

Bridge Inspection

Railroad bridges are subjected to train loads and associated effects, as noted above. In addition, they are subjected to both natural and non-natural effects. Natural effects include decay, corrosion, deterioration of concrete and masonry, thermal expansion and contraction, freezing and thawing of water, floods, and growth of vegetation. Non-natural effects include impacts from vehicles and vessels, train derailments, vandalism and fires. All of these effects can severely and rapidly degrade the capacity of a bridge to safely carry its railroad traffic.

Railroad bridges also support much heavier loads in relation to their own weight (ratio of live load to dead load) than do highway bridges. All of these factors have led to a standard practice in the railroad industry to inspect each bridge carrying railroad tracks at a frequency of not less than once per year.

Bridge inspection, unlike the inspection of track, equipment and other railroad property, is a multi-level process. The inspector is a technician who should be able to reach all parts of the bridge to be inspected, detect indications of deterioration or other problems on the bridge, and accurately record and report them. Most railroad bridge inspection programs employ inspectors with these qualifications, but those inspectors are not expected to be able to perform the engineering calculations necessary to determine the safe capacity of a bridge. That function is performed by a competent engineer, working from basic design and historical records of the bridge and the reports of the inspector-technicians.

While the engineer needs complete and accurate information on the condition of the bridge from the inspector, the inspector can provide a much more comprehensive inspection if the engineer provides information back regarding any critical points or components on the bridge that might call for more intensive investigation or specialized inspection techniques. These items might be discovered in the bridge design documents, especially the so-called ''stress sheets,'' or by review of certain types of connections that have been prone to trouble on other bridges. This type of two-way communication can prove invaluable.

Protection of Train Operations

FRA did not address the issue of protection of train operations from potentially hazardous bridge conditions in the guidelines because FRA did not find it to be a problem at the time. Since then, however, FRA has discovered several instances where a person who was not fully qualified to determine the safety of a bridge was dispatched to resolve a report of trouble, and that person approved the bridge for continued service based on the criteria in the Federal Track Safety Standards, rather than a structural evaluation of the bridge. In a typical case, a track owner would have a railroad track inspector investigate a report from a train crew of rough track on a bridge. It is possible that during such an investigation, even a diligent track inspector would fail to find a deviation from the requirements of the Track Safety Standards for the class of track on the bridge, or, in the alternative, would find that the track could be brought into compliance with a temporary speed restriction. In this situation, it is likely that, after possibly placing a speed restriction, he would have returned the bridge to service while the structural condition that caused the track anomaly still existed. Without further attention, the anomaly would continue to deteriorate, until the bridge actually failed under load.

Recommended Action: FRA makes the following specific recommendations to owners of railroad track carried on one or more bridges, in order to prevent the deterioration of railroad bridges and reduce the risk of human casualties, environmental damage and disruption to the Nation's transportation system that would result from a catastrophic bridge failure.

(1) Inventory of Railroad Bridges. Every owner of track carried on one or more bridges should maintain an accurate inventory of those bridges. The inventory, or ''bridge list,'' should identify the location of the bridge, its configuration, type of construction, number of spans, span lengths, and all other information necessary to provide for management of the bridges.

(2) Regular Comprehensive Inspections. Every owner of track carried on a bridge should ensure that regular comprehensive inspections are conducted, as these are vital to maintaining valid bridge ratings and to performing timely bridge maintenance and repairs.

(3) Determination of Railroad Bridge Capacities and Loads. Several critical points are associated with making a proper determination of bridge capacities and loads. At a minimum, each track owner should take the following actions:

(a) Ensure that a professional engineer competent in the field of railroad bridge engineering, or someone under his or her supervision, determines bridge capacity;

(b) Maintain a record of the safe capacity of every bridge which carries its track; and

(c) Enforce a procedure that will ensure that its bridges are not loaded beyond their capacities.

(4) Railroad Bridge Inspection Procedures and Recordkeeping.

(a) *Inspection frequency.* Every bridge which carries railroad traffic should be inspected at least once per year. The level of detail and the inspection procedure should be appropriate to the configuration of the bridge, conditions found during previous inspections, and the nature of the railroad traffic moved over the bridge (car weights, train frequency and length, levels of passenger and hazardous materials traffic, and vulnerability of the bridge to damage).

(b) *Inspection records.* Every bridge inspection should be recorded, and the record of the inspection be available to the engineer who is responsible for the integrity of the bridge. The inspection record should show the date on which the inspection was actually performed, the precise identification of the bridge inspected, the items inspected and the condition of those items. Any inspection item that is found by the inspector to be a potential problem should be described in a narrative.

Many different systems are used to ascribe condition values to bridges and their components, but care should be taken that the inspection reports do not simply generate a number but, instead, an accurate description of the condition of the bridge components. It is appropriate to use a valuation system that serves to identify individual inspection reports that should be reviewed by the engineer or other engineering managers.

(c) *Prescribing inspection procedures.* The engineer responsible for the safety of a group of railroad bridges should prescribe the inspection procedures for those bridges. Bridges of a common configuration and no exceptional conditions may be considered as a group for a common procedure, but uncommon bridges, those with critical components and bridges which indicate possible deterioration that could affect their continued safety should be noted to the inspector. The inspector should be advised of any particular items of concern on the bridge, and any specific inspection procedure (frequency, detail and method) that is necessary to maintain the safety of the bridge.

(d) *Review of inspection reports by a competent engineer.* Bridge inspection reports should be reviewed by an engineer who is competent in the field of railroad bridge engineering. The

engineer should determine whether the bridges are being inspected according to the applicable procedure and frequency, and will review any items noted by the inspector as exceptions. Often, the individual exceptions would not indicate a serious problem with a bridge, but when considered together by an engineer, they would show a more serious problem developing on the bridge.

(5) Protection of Train Operations. A bridge owner should designate qualified bridge inspectors or maintenance personnel to authorize the operation of trains on bridges following repairs, damage or indications of potential structural problems. Only a qualified person should be permitted to authorize train operation after such an occurrence.

Implementation of the FRA Bridge Safety Program

FRA has been conducting evaluations of railroad bridge management programs since the 1980's, before the Bridge Safety Policy was first issued. The Policy indicates that its guidelines will be the basis for FRA's evaluation of bridge management. This Safety Advisory essentially amplifies and clarifies the criteria included in the Policy guidelines. The recommendations included in this Safety Advisory will be reviewed by FRA personnel when conducting evaluations of railroad bridge management. The same criteria, together with other risk factors, will be considered by FRA when selecting small railroads for further evaluation. FRA will maintain on-going evaluations on the larger railroads and passenger carriers.

FRA has been able to adhere to its policy of not issuing specific regulations governing bridge management, bridge conditions and bridge capacities. If the continuing evaluations show that the railroad industry is essentially adhering to the principles of good engineering and the provisions of this Safety Advisory, and also provided that no significant train accidents are caused by the structural failure of a railroad bridge, FRA intends to continue with this non-regulatory policy.

Owners of track carried on one or more railroad bridges are encouraged to voluntarily take action in accordance with these recommendations. If circumstances so warrant, FRA reserves the authority to take other corrective action, including: issuing an emergency order to restrict operations over a railroad bridge if necessary to protect public safety, modifying this Safety Advisory 2007–03, issuing additional safety advisories, taking regulatory action, or taking other appropriate action necessary to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on September 4, 2007.

Jo Strang,

Associate Administrator for Safety.

[FR Doc. E7–17811 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–1998–4957]

Request for Public Comments and Office of Management and Budget Approval of an Existing Information Collection (2137–0618)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal and extension of an information collection: ''Pipeline Safety: Periodic Underwater Inspections.'' PHMSA invites the public to submit comments over the next 60 days on whether the existing information collection is necessary for the proper performance of the functions of DOT.

DATES: Submit comments on or before November 13, 2007.

ADDRESSES: Reference Docket PHMSA–1998–4957 and submit comments in the following ways:

- *Electronic Submissions:* Through September 27, 2007, comments may be submitted electronically on the e-Gov Web site at *http://www.regulations.gov* or on the DOT electronic docket site, *http://dms.dot.gov.* To submit comments on the DOT electronic docket, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.'' Beginning on September 27, 2007, electronic comment submissions may only be made on the E-Gov Web site at *http://www.regulations.gov.*
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System; 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–1998–4957, at the beginning of your comments. If you mail your comments, send two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Through September 27, 2007, internet users may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number. Beginning September 30, 2007, internet users may access all comments received by DOT at *http://www.regulations.gov.* (Please note that comments may not be accessible on either Web site on September 28–29, 2007, during system migration). All comments are posted electronically without changes or edits, including any personal information provided.

Privacy Act—Anyone can search the electronic form of all comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477), and is on the Web at *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT: Roger Little at (202) 366–4569, or by e-mail at roger.little@dot.gov.

SUPPLEMENTARY INFORMATION: This notice concerns Periodic Underwater Inspections, an existing information collection in 49 CFR 192.612 and 195.413 of the pipeline safety regulations. PHMSA requires each operator of a natural gas or hazardous liquid pipeline in the Gulf of Mexico and its inlets to periodically inspect its pipelines in waters less than 15 feet (4.6 meters) deep as measured from mean low water that are at risk of being an exposed underwater pipeline or a hazard to navigation. If an operator discovers that its pipeline is an exposed underwater pipeline or poses a hazard to navigation, the operator must promptly report the location and, if available, the geographic coordinates of that pipeline to the National Response Center.

PHMSA is now requesting that OMB grant a three-year term of approval for renewal of this information collection. Pursuant to 44 U.S.C. 3506(c)(2)(A) of the PRA, PHMSA invites comments on

whether the renewal is necessary for the proper performance of the functions of DOT. As used in this notice, the term ''information collection'' includes all work related to preparing and disseminating information related to this information collection requirement including completing paperwork, gathering information, and conducting telephone calls. Comments may include (1) whether the information will have practical utility; (2) the accuracy of DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Type of Information Collection Request: Renewal of existing collection.

Title of Information Collection: Pipeline Safety: Periodic Underwater Inspections.

Respondents: 82.

Estimated Total Annual Burden on Respondents: 1,350 hours.

Estimated Cost: $6,475.

Issued in Washington, DC on September 4, 2007.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E7–17896 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting in preparation for the twenty-first meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) to be held November 5–16, 2007 in Montreal, Canada.

DATES: Wednesday, October 24, 2007, 1:30 p.m.–5 p.m.

ADDRESSES: The meeting will be held at the new DOT Headquarters, West Building, Oklahoma City Conference Room, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Duane Pfund, Director, Office of International Standards, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this public meeting will be to discuss draft U.S. positions on the proposals that will be considered during the 21st Meeting of the ICAO DGP. Agenda items include:

Agenda Item 1: Development of proposals, if necessary, for amendments to Annex 18—Safe Transport of Dangerous Goods by Air.

Agenda Item 2: Development of recommendations for amendments to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284) for incorporation in the 2009–2010 Edition.

Agenda Item 3: Development of recommendations or amendments to the Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284) for incorporation in the 2009–2010 Edition.

Agenda Item 4: Amendments to the Emergency Response Guidance for Aircraft Incidents involving Dangerous Goods (Doc 9481) for incorporation in the 2009–2010 Edition.

Agenda Item 5: Resolution, where possible, of the non-recurrent work items identified by the Air Navigation Commission or the panel.

5.1: Principles governing the transport of dangerous goods on cargo only aircraft.

5.2: Reformatting of the packing instructions.

5.3: Review of provisions for dangerous goods carried by passengers and crew.

5.4: Review of provisions for dangerous goods relating to lithium batteries.

5.5: Review of amendment process for the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284).

In addition, we are soliciting comments on PHMSA's international agenda as it relates to PHMSA's work with the ICAO DGP. In particular, input is requested on any air-mode specific harmonization issues regarding the requirements of the ICAO Technical Instructions (ICAO TI) and the U.S. Hazardous Materials Regulations (U.S. HMR). Discussion topics include but are not limited to:

—How can PHMSA more closely align the limited quantity and consumer commodity provisions within the U.S. HMR and the ICAO TI?

—What efforts should be undertaken to address differences between the U.S. HMR and the ICAO TI related to packaging requirements and inner packaging quantity limits;

—What specific operational requirements differ between the U.S. HMR and the ICAO TI and how should those differences be addressed?

—PHMSA is interested in partnering with the regulated industry to identify a comprehensive list of differences between the U.S. HMR and the ICAO TI, and determine the most appropriate manner in which to address these differences.

—What aspects of the U.S. HMR could be better aligned with the ICAO TI, and conversely, are there any provisions within the U.S. HMR that could be considered by the ICAO DGP for inclusion in the ICAO TI?

—PHMSA is soliciting input relative to the use of the U.S. HMR or ICAO TI (as an alternative to the U.S. HMR) for domestic air transportation and the necessity for specific U.S. HMR exceptions applicable only to domestic air transport.

For more information on the ICAO DGP and to check for updates on information related to this public meeting visit PHMSA's International Standards Web site at *http://hazmat.dot.gov/regs/intl/intstandards.htm*. To download papers which will be considered by the Panel visit the DGP Web site at *http://www.icao.int/anb/FLS/DangerousGoods/flsdg.cfm*.

Robert A. Richard,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 07–4426 Filed 9–10–07; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1000 (Sub-No. 1X)]

Georgia Southwestern Railroad, Inc.—Abandonment and Discontinuance Exemption—in Harris and Meriwether Counties, GA

On August 22, 2007, Georgia Southwestern Railroad, Inc. (GSWR) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 43-mile line of railroad between milepost R–12.0 at Florida Rock and milepost R–55.0 at Allie, in Harris and Meriwether Counties, GA, and to discontinue overhead trackage rights over a line owned by Central of Georgia Railroad Company (CGR)

between milepost R–2.0 north of Columbus and milepost R–12.0 at Florida Rock, in Harris County, GA.[1] The lines traverse United States Postal Service Zip Codes 30222, 31804, 31811, and 31822. The line GSWR seeks to abandon includes no stations.

The line sought to be abandoned does not contain federally granted rights-of-way. Any documentation in GSWR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 10, 2007.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 1, 2007. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–1000 (Sub-No. 1X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before October 1, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 31, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–17733 Filed 9–10–07; 8:45 am]

BILLING CODE 4915–01–P

[1] GSWR obtained the line it seeks to abandon and a total of 12.2 miles of incidental overhead trackage rights from CGR in 2005. *See Georgia Southwestern Railroad, Inc.—Acquisition and Operation Exemption—Central of Georgia Railroad Company,* STB Finance Docket No. 34699 (STB served May 20, 2005). The trackage rights extended from milepost M–290.3 at South Columbus to milepost M–290.9/P–290.9 at Columbus and from milepost P–291.7/R–1.2 at West Columbus to milepost R–12.0 at Florida Rock, in Harris and Muscogee Counties, GA.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 5, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 11, 2007 to be assured of consideration.

Federal Consulting Group

OMB Number: 1505–xxxx.

Type of Review: New collection.

Title: Questionnaire for Telephone Excise Tax Refund (TETR) Non Filers—Business.

Description: The Treasury Inspector General for Tax Administration (TIGTA), as part of its Fiscal Year 2008 Audit Plan, will interview a valid sample of business taxpayers who did not claim the Telephone Excise Tax Refund (TETR) on their Calendar Year 2006 business tax returns. The interview will be conducted using a set of questions designed to elicit the reasons or rationale why the contacted taxpayers did not claim the TETR. The overall purpose for the interviews is to collect sufficient data that can be analyzed to determine what actions, if any, the Internal Revenue Service should now take to further advertise the availability of the one-year credit to business taxpayers who may wish to file an amended tax return.

Respondents: Business and other for-profit institutions.

Estimated Total Reporting Burden: 64 hours.

Clearance Officer: Joseph Ananka, (202) 622–5964, 1125 15th Street, NW., Room 700 A, Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–17860 Filed 9–10–07; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 5, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 11, 2007 to be assured of consideration.

Federal Consulting Group

OMB Number: 1505–0200.

Type of Review: Extension.

Title: Terrorism Risk Insurance Program Loss Reporting.

Forms: TRIP 01, TRIP 02.

Description: Information collection made necessary by the Terrorism Risk

Insurance Act of 2002, as amended by the Terrorism Risk Insurance Extension Act of 2005, and by Treasury implementing regulations to pay Federal share to commercial property and casualty insurers for terrorism losses.

Respondents: Business and other for-profit institutions.

Estimated Total Reporting Burden: 4,200 hours.

Clearance Officer: Howard Leiken, (202) 622–7139, Department of the Treasury, 1425 New York Avenue, NW., Room 2113, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–17862 Filed 9–10–07; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before November 13, 2007.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, recordkeeping requirements, or questionnaires:

Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Number: 1513–0025.

TTB Form Number: 5200.11.

Abstract: This form documents the release of tobacco products and cigarette papers and tubes from customs custody, or the return of such articles, to a manufacturer or an export warehouse proprietor for use in the United States without payment of tax or duty. The form is also used to ensure compliance with laws and regulations at the time of these transactions and for post audit examinations.

Current Actions: There are minor corrections to this information collection, and it is being submitted as a revision. We have made a few grammatical corrections to the form as well as updated an office name.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 268.

Estimated Total Annual Burden Hours: 536.

Title: Notice of Change in Status of Plant.

OMB Number: 1513–0044.

TTB Form Number: 5110.34.

Abstract: TTB F 5110.34 is necessary to show the use of the distilled spirits plant (DSP) premises for other activities or by alternating proprietors. It describes the proprietor's use of plant premises and other information to show that the change in plant status is in conformity with law and regulations. It also shows what bond covers the activities of the DSP at a given time.

Current Actions: We made minor grammatical changes to this information collection, and it is being submitted as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 1,000.

Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

OMB Number: 1513–0050.

TTB Form Number: 5110.50.

Abstract: TTB F 5110.50 is the bond to secure payment of excise taxes on distilled spirits shipped from Puerto Rico to the U.S. on deferral of the tax. The form identifies the principal, the surety, purpose of bond, and allocation of the penal sum among the principal's locations.

Current Actions: We made minor grammatical changes to this information collection and it is being submitted as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 10.

Title: Usual and Customary Business Records Maintained by Brewers.

OMB Number: 1513–0058.

Recordkeeping Requirement Number: 5130/1.

Abstract: TTB audits brewers' records to verify production of beer and cereal beverages, and to verify the quantity of beer removed subject to tax and removed without payment of tax.

Current Actions: This information collection is being submitted as a revision. There is an increase to the number of respondents; however, there is no change to the burden. Since these are usual and customary records that the tobacco manufacturer would keep in the normal course of doing business, the burden remains at one (1).

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,640.

Estimated Total Annual Burden Hours: One (1).

Title: Recordkeeping for Tobacco Products Removed in Bond from Manufacturers' Premises for Experimental Purposes—27 CFR 40.232(d).

OMB Number: 1513–0110.

Recordkeeping Requirement Number: None.

Abstract: The prescribed records apply to manufacturers who ship tobacco products in bond for experimental purposes. TTB can examine these records to determine that the proprietor has complied with law and regulations that allow such tobacco products to be shipped in bond for experimental purposes without payment of the excise tax.

Current Actions: This information collection is being submitted as a revision. There is an increase to the number of respondents; however, there is no change to the burden. These are usual and customary records that the tobacco manufacturer would keep in the normal course of doing business; therefore, the burden remains at one (1).

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; Individuals or households.

Estimated Number of Respondents: 170.

Estimated Total Annual Burden Hours: One (1).

Title: Statement of Ultimate Vendor (27 CFR 53.179(b)); Exemption Certificate (27 CFR 53.134(d)(2)); Exemption Certificate (27 CFR 53.135(c)); Statement of Manufacturer's Vendee (27 CFR 53.133(d)); and Statement of Manufacturer's Vendee (27 CFR 53.132(c)).

OMB Number(s): To be assigned.

TTB Form Numbers: TTB I 5600.33; TTB I 5600.34; TTB I 5600.35; TTB I 5600.36, and TTB I 5600.37, respectively.

Abstract: 27 CFR part 53 requires that, in some cases, persons who sell firearms or ammunition tax-free use specific exemption certificates or statements to support the tax-free sales. In addition, 27 CFR part 53 requires a specific statement from the ultimate vendor to support claims for certain tax refunds or credits. Although the regulations require firearms and ammunition excise taxpayers to design and reproduce these certificates or statements as specified in the regulations, in order to promote uniformity among excise taxpayers and compliance with regulations, these certificates and statements are needed.

Current Actions: We are changing this information collection. First, we are changing the ''I'' in the form number to an ''F.'' Secondly, because some of the forms have the same name, we are changing the names of four of the forms to: Exemption Certificate (Use on Certain Vessels or Aircraft), TTB F 5600.34; Exemption Certificate (Use by State or Local Governments), TTB F 5600.35; Statement of Manufacturer's Vendee (For Exports), TTB F 5600.36; and Statement of Manufacturer's Vendee (Use in Further Manufacture), TTB F 5600.37. TTB F 5600.33 will remain the same, ''Statement of Ultimate Vendor.'' Thirdly, we added a Paperwork Reduction Act Notice to each of the forms. Finally, the regulations require the information collected in these forms to be collected and retained, but not in any particular format. The regulations offer these forms as merely a uniform way of collecting the required information. Therefore, we are seeking approval of these forms; but more importantly, we are seeking approval of the information collection requirements found in the regulatory sections listed above.

Type of Review: Existing collection in use without an OMB control number.

Affected Public: Business or other for-profit; individuals or households; State or Local Governments.

Estimated Number of Respondents: 7,000.

Estimated Total Annual Burden Hours: 52,500.

Dated: September 5, 2007.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E7–17877 Filed 9–10–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service Proposed Collection; Comment Request for Form 8921

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8921, Applicable Insurance Contracts Information Return.

DATES: Written comments should be received on or before November 13, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to David C. Brown, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Applicable Insurance Contracts Information Return.

OMB Number: 1545–2083.

Form Number: Form 8921.

Abstract: To comply with IRC section 6050V, as added by the Pension Protection Act of 2006, an applicable exempt organization must file a Form 8921 for each structured transaction under which it makes reportable acquisitions of applicable insurance contracts. The information gathered will be used by the Treasury to issue a two-year report to Congress.

Current Actions: There are no changes being made to Form 8921 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 35 hours, 53 minutes.

Estimated Total Annual Burden Hours: 1,794,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 29, 2007.

Larnice Mack,

IRS Reports Clearance Officer.

[FR Doc. E7–17819 Filed 9–10–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
September 11, 2007

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Side Impact Protection; Fuel System Integrity; Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection; Side Impact Phase-In Reporting Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–29134]

RIN 2127–AJ10

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Side Impact Protection; Fuel System Integrity; Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection; Side Impact Phase-In Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule incorporates a dynamic pole test into Federal Motor Vehicle Safety Standard (FMVSS) No. 214, ''Side impact protection.'' To meet the test, vehicle manufacturers will need to assure head and improved chest protection in side crashes. It will lead to the installation of new technologies, such as side curtain air bags and torso side air bags, which are capable of improving head and thorax protection to occupants of vehicles that crash into poles and trees and vehicles that are laterally struck by a higher-riding vehicle. The side air bag systems installed to meet the requirements of this final rule will also reduce fatalities and injuries caused by partial ejections through side windows.

Vehicles will be tested with two new, scientifically advanced test dummies representing a wide range of occupants, from mid-size males to small females. A test dummy known as the ES–2re will represent mid-size adult male occupants. A test dummy known as the SID–IIs will represent smaller stature occupants. The SID–IIs is the size of a 5th percentile adult female.

This final rule also enhances FMVSS No. 214's moving deformable barrier (MDB) test. The current 50th percentile male dummy in the front seat of tested vehicles will be replaced with the more biofidelic ES–2re. In the rear seat, the new 5th percentile female SID–IIs dummy will be used, thus improving protection to a greater segment of occupants seated in rear seating positions.

The ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU),'' was enacted in August 2005. Section 10302 of the Act directed the agency ''to complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes.'' In accordance with § 10302, the side impact air bags installed in front seats and vehicle changes made to rear seats will enhance, substantially, passenger motor vehicle occupant protection in side impacts.

DATES: *Effective date:* The date on which this final rule amends the CFR is November 13, 2007.

Petition date: If you wish to petition for reconsideration of this rule, your petition must be received by October 26, 2007.

Compliance dates: This final rule adopts a four-year phase-in of the new test requirements. The phase-in begins on September 1, 2009. By September 1, 2012, all vehicles must meet the upgraded pole and barrier test requirements of the standard, with certain exceptions. Alterers, manufacturers of vehicles produced in more than one stage, and manufacturers of vehicles with a gross vehicle weight rating greater than 3,855 kilograms (kg) (8,500 pounds (lb)) have until September 1, 2013 to meet the upgraded pole and barrier test requirements. Manufacturers can earn credits toward meeting the applicable phase-in percentages by producing compliant vehicles ahead of schedule, beginning November 13, 2007 and ending at the conclusion of the phase-in.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Christopher J. Wiacek, NHTSA Office of Crashworthiness Standards, telephone 202–366–4801. For legal issues, you may call Deirdre R. Fujita, NHTSA Office of Chief Counsel, telephone 202–366–2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

a. Final Rule

Federal Motor Vehicle Safety Standard (FMVSS) No. 214, ''Side impact protection,'' currently provides thoracic and pelvic protection in a test using a moving deformable barrier to simulate being struck in the side by another vehicle. NHTSA is upgrading FMVSS No. 214 by requiring all passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kg or less (10,000 lb or less) to protect front seat occupants in a vehicle-to-pole test simulating a vehicle crashing sideways into narrow fixed objects like utility poles and trees. By doing so it requires vehicle manufacturers to assure head and improved chest protection in side crashes for a wide range of occupant sizes and over a broad range of seating positions. It will ensure the installation of new technologies, such as side curtain air bags [1] and torso side air bags, which are capable of improving head and thorax protection to occupants of vehicles that crash into poles and trees and of vehicles that are laterally struck by a higher-riding vehicle. The side air bag systems installed to meet the requirements of this final rule will also reduce fatalities and injuries caused by partial ejections through side windows.[2]

This will be the first time that head injury criteria must be met under the standard. In addition, thoracic, abdominal and pelvic protection in the FMVSS No. 214 crash tests must also be provided.

Vehicles will be tested with two new, scientifically advanced test dummies representing a wide range of occupants, from mid-size males to small females. A test dummy known as the ES–2re will represent mid-size adult male occupants. The ES–2re, a modified version of the European ES–2 side impact dummy, has improved biofidelity and enhanced injury assessment capability compared to all other mid-size adult male dummies used today. A test dummy known as the SID–IIs will represent smaller stature occupants. The SID–IIs is the size of a 5th percentile adult female. Crash data indicate that 34 percent of all serious and fatal injuries to near-side occupants in side impacts occurred to occupants 5 feet 4 inches (163 cm) or less, who are better represented by the 5th percentile dummy.[3] (Specifications for the ES–2re and SID–IIs dummies have already been adopted into the agency's regulation for anthropomorphic test dummies, 49 CFR Part 572. For the ES–2re, the final rule was published December 14, 2006; 71 FR 75304 (NHTSA Docket 25441). For the SID–IIs, the final rule published December 14, 2006; 71 FR 75342 (Docket 25442).)

This final rule also enhances FMVSS No. 214's moving deformable barrier (MDB) test. In the test, the current 50th percentile male dummy in the front seat of tested vehicles will be replaced with the more biofidelic ES–2re. In the rear seat, the 5th percentile female SID–IIs dummy will be used, to enhance protection to a greater segment of occupants seated in rear seating positions. The 50th percentile male dummy and the 5th percentile female dummy together better represent the at-risk population than one dummy alone. Through use of both test dummies, vehicles must provide head, enhanced thoracic and pelvic protection to occupants ranging from mid-size males to small occupants in vehicle-to-vehicle side crashes.

We estimate that this final rule will prevent 311 fatalities and 361 serious injuries a year [4] when fully implemented throughout the light vehicle fleet. Countermeasures that not only reduce head injuries, but that also help reduce partial ejections through side windows, can save additional lives. The cost of the most likely potential countermeasure—a 2-sensor per vehicle window curtain and separate thorax side air bag system—compared to no side air bags is estimated to be $243 per vehicle. After analyzing the data voluntarily submitted by manufacturers on their planned installation of side air bag systems, we estimate this final rule will increase the average vehicle cost by $33 [5] and increase total annual costs for the fleet by $560 million. We provide sufficient lead time to ensure that compliance is practicable.

The agency's data show that the majority of side air bag systems are currently equipped with two side impact sensors. If the market share of the two-sensor and four-sensor systems remains unchanged, the incremental cost for the most likely air bag system (curtain and thorax bag two-sensor countermeasure) would be about $620 million, or $37 per vehicle, assuming all light vehicles will be equipped with curtain air bags.

This final rule fulfills the mandate of the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' which was signed by President George W. Bush in August 2005. Evidently aware of the agency's pending notice of proposed rulemaking to upgrade FMVSS No. 214, Section 10302 of the Act directed the agency ''to complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes.''

State of the Art

The state of knowledge and practicability of measures that can be taken to improve side impact protection are considerably greater than they were just a decade ago. Extensive work by those involved in the design, manufacture and evaluation of vehicle safety systems have led to substantial progress in crash test dummies, injury criteria and countermeasures used to mitigate side impacts. Inflatable side impact air bags (SIABs) have become

[1] These different side air bag systems are described in a glossary in Appendix A to this preamble.

[2] Improving side impact protection and reducing the risk of ejection are prominent in the National Highway Traffic Safety Administration's strategies to improve occupant protection. Further requirements to mitigate ejection are being developed by the agency to fulfill Sec. 10301 of SAFETEA–LU, which amended the National Highway and Motor Vehicle Safety Act (49 U.S.C. Chapter 301) to require the Secretary to issue by October 1, 2009 an ejection mitigation final rule reducing complete and partial ejections of occupants from outboard seating positions (49 U.S.C. 30128(c)(1)).

[3] Samaha R. S., Elliott D. S., ''NHTSA Side Impact Research: Motivation for Upgraded Test Procedures,'' 18th International Technical Conference on the Enhanced Safety Of Vehicles Conference (ESV), Paper No. 492, 2003.

[4] Benefits and costs are estimated assuming 100 percent installation of Electronic Stability Control (ESC) systems in vehicles, and are based on manufacturers' current and planned installation of side air bags.

[5] There are a wide variety of baseline side air bag systems planned for MY 2011. Some of these systems meet the final rule requirements, while manufacturers need to incorporate wider side air bags in others or add wide thorax side air bags or window curtains. The $33 incremental cost estimate is a weighted average of the costs to bring all these different baseline conditions into compliance with the final rule.

available in current production vehicles. They vary widely in designs, sizes, mounting locations, methods of inflation and areas of coverage. For example, side impact protection systems include door-mounted thorax bags, seat-mounted thorax bags, seat-mounted head/thorax bags, and head protection systems that deploy from the roof rails (*e.g.*, inflatable curtains, and inflatable tubular structures).

While varied in design, SIABs make possible vast improvements in head and torso protection that can be provided in side impacts. Head injuries alone account for 41 percent of the total deaths in the target population addressed by this final rule. For smaller-stature occupants, head injury represents a higher proportion of the serious injuries than it does for larger occupants, as a result of relatively more head contacts with the striking vehicle.[6] NHTSA estimates that SIABs reduce fatality risk for nearside occupants by an estimated 24 percent; torso bags alone, by 14 percent.[7]

These remarkable improvements can accrue at reasonable costs. Vehicle manufacturers are already installing SIABs in some of their new vehicles. On December 4, 2003, the Alliance of Automobile Manufacturers, the Association of International Automobile Manufacturers (AIAM), and the Insurance Institute for Highway Safety (IIHS) announced a new voluntary commitment to enhance occupant protection in front-to-side and front-to-front crashes. The industry initiative consisted of improvements and research made in several phases, focusing, among other things, on accelerating the installation of SIABs.[8]

Through voluntary efforts, manufacturers are able to begin equipping vehicles with advanced technologies and are able to advance safety more quickly than through the regulatory process. In formulating this regulation, we have been mindful to remain consistent with the technological advances upon which the industry's voluntary commitment were based, so as not to discourage further implementation while manufacturers develop designs and technologies that are able to comply with this regulation. This regulation builds on the same technologies that will be used by the industry to meet its voluntary commitment, and takes them even further.

The industry's voluntary commitment demonstrated the feasibility of SIABs as a fleet-wide countermeasure and ushered in a new stage in the regulatory, research and technological developments relating to side impact protection.[9] This final rule broadens and fortifies this stage. Establishing these requirements as an FMVSS assures enhanced protection to all purchasers of vehicles, from those buying the most economical cars to purchasers of luxury trucks, to consumers in between. Together, the near term voluntary commitment and this final rule will achieve unprecedented side impact protection benefits.

b. How the Final Rule Differs From the NPRM

The noteworthy changes from the NPRM are outlined below and explained in detail later in this preamble. More minor changes (e.g., arm position of the dummies for the MDB tests, procedures for determining vehicle test attitude for the MDB test) are discussed in the appropriate sections of this preamble.

A. The agency proposed to use a SID–IIs Build C small female test dummy to which the agency had added ''floating rib guide'' (FRG) components to increase the durability of the dummy. The dummy with the FRG modification was called the ''SID–IIsFRG.'' Comments to the NPRM maintained that the entirety of the FRG modifications was unnecessary, and that the totality of the FRG modifications needlessly reduced the biofidelity and functionality of the dummy. Some commenters suggested alternative means of improving the durability of the Build Level C dummy. After reviewing the comments to the NPRM and available test data, including the performance of the SID–IIs dummy in vehicle tests conducted with 2004–2005 model year (MY) vehicles[10] [hereinafter ''214 fleet testing program''], we have decided to adopt some, but not all, of the FRG modifications, and to adopt the commenters' alternative suggested revisions to Build Level C. The SID–IIs dummy adopted today into FMVSS No. 214 is referred to as the SID–IIs ''Build Level D'' crash test dummy.[11] Build Level D incorporates features stemming from the FRG and from users' efforts to enhance the functionality of predecessor SID–IIs dummies.

B. Mindful of the magnitude of this rulemaking and the principles for regulatory decisionmaking set forth in Executive Order 12866, Regulatory Planning and Review, NHTSA examined the benefits and costs of this rulemaking and, based on that analysis, took steps to reduce unnecessary test burdens associated with this final rule. After reviewing the comments to the NPRM and available test data, including MDB testing conducted in the NHTSA 214 fleet testing program, we have decided to require one MDB test per side of the vehicle. The MDB test specifies use of an ES–2re (50th percentile adult male) dummy in the front seating position and a SID–IIs (5th percentile adult female) dummy in the rear. Virtually all vehicles tested in the 214 fleet testing program met the MDB requirements when tested with SID–IIs in the front seat and the ES–2re dummy in the rear. Accordingly, we concluded that no additional benefits would accrue from an MDB test with the dummies so configured.

C. After reviewing the comments to the NPRM, the results of the 214 fleet

[6] Samaha, *supra.*

[7] Final Regulatory Impact Analysis, ''FMVSS No. 214; Amending side impact dynamic test; Adding oblique pole test.'' Braver and Kyrychenko (2003) estimated that torso bags plus head protection reduced drivers' fatality risk in nearside impacts by 45 percent relative to drivers in cars without SIABs. Braver and Kyrychenko, ''Efficacy of Side Airbags in Reducing Driver Deaths in Driver-Side Collisions,'' IIHS Status Report, Vol. 38, August 26, 2003. That study was based on fewer crash data than those used by NHTSA in its 2005 analysis.

[8] See Docket NHTSA–2003–14623–13. Alliance and AIAM members agreed to this voluntary commitment. Under Phase 1 of the voluntary commitment, manufacturers have agreed that, not later than September 1, 2007, at least 50 percent of each manufacturer's new passenger car and light truck (GVWR up to 3,855 kg (8,500 lb) production intended for sale in the U.S. will be designed in accordance with either of the following head protection alternatives: (a) HIC_{36} performance of 1000 or less for a SID–H3 crash dummy in the driver's seating position in an FMVSS No. 201 pole impact test, or (b) HIC_{15} performance of 779 or less (with no direct head contact with the barrier) for a SID–IIs crash dummy in the driver's seating position in the IIHS MDB perpendicular side impact test. HIC_{36} means the calculation of HIC is limited to a maximum time interval of 36 milliseconds. HIC_{15} refers to a HIC calculating using a maximum time interval of 15 milliseconds. In Phase 2, not later than September 1, 2009, 100 percent of each manufacturer's new passenger car and light truck (GVWR up to 3,855 kg) (8,500 lb) production will be designed in accordance with the IIHS MDB recommended practice of HIC_{15} performance of 779 or less for a SID–IIs crash dummy in the driver's seating position. The voluntary commitment provides exclusions for vehicles ''that a manufacturer determines, due to basic practicability and functionality reasons, cannot meet the performance criteria, and would have to be eliminated from the market if compliance were required.'' (Alliance comment to Docket 17694, page 4, April 12, 2005.)

[9] Section IV of the May 17, 2004 NPRM discusses the regulatory, research and technological developments related to FMVSS No. 214, from 1990 to the present. 69 FR at 27993.

[10] See Section IV of this preamble; also NHTSA's technical report of the test program, ''NHTSA Fleet Testing for FMVSS No. 214 Upgrade MY 2004–2005,'' April 2006, Docket 25441–11 (25441 is the docket for the ES–2re test dummy final rule); and memorandum regarding location of the test date. December 6, 2006, Docket 25441–9.

[11] Docket 25442; final rule adopting SID–IIs Build Level D dummy into 49 CFR Part 572.

testing program and production plans which show installation of side air bags in vehicles ahead of the proposed schedule, we have determined that it would be practicable to provide a two-year lead time instead of the four-year lead time proposed in the NPRM leading up to the beginning of the phased-in pole test requirements. Compared to the original schedule, this would accelerate the benefits expected to be provided by side air bag systems and other countermeasures by phasing-in the requirements starting with 20 percent of model year (MY) 2010 vehicles. As explained in the FRIA, the phase-in schedule and percentages of this final rule facilitate the installation of side impact air bags and other safety countermeasures in light vehicles as quickly as possible, while the allowance of advanced credits provides manufacturers a way of allocating their resources in an efficient manner to meet the schedule. At the same time, we are also adding a fourth year to the proposed 3-year phase-in period and are making other adjustments to the schedule for heavier vehicles, to enhance the practicability of meeting the new requirements and provide additional flexibility to manufacturers to meet the requirements. Accordingly, under the phase-in schedule adopted in this final rule, the following percentages of each manufacturer's vehicles will be required to meet the new requirements:

—20 percent of ''light'' vehicles (gross vehicle weight rating (GVWR) less or equal to 3,855 kilograms (kg) (8,500 pounds) (lb) manufactured during the period from September 1, 2009 to August 31, 2010;
—50 percent of light vehicles manufactured during the period from September 1, 2010 to August 31, 2011;
—75 percent of light vehicles manufactured during the period from September 1, 2011 to August 31, 2012;
—100 percent of light vehicles manufactured on or after September 1, 2012, including limited line and small volume vehicles;
—100 percent of vehicles with a GVWR greater than 3,855 kg (8,500 lb) manufactured on or after September 1, 2013 and vehicles produced by alterers and multistage manufacturers.

In addition, vehicle manufacturers will be able to earn credits for meeting the requirements ahead of schedule.

We are providing more lead time to meet the pole test requirements to manufacturers of vehicles with a GVWR greater than 3,855 kg (8,500 lb) because the vehicles have never been regulated under FMVSS No. 214's dynamic requirements and are not subject to the industry's voluntary commitment to install side air bags. Because more redesign of the vehicle side structure, interior trim, and/or optimization of dynamically deploying head/side protection systems may be needed in these vehicles than in light vehicles, this final rule does not subject these vehicles to the pole test requirements until September 1, 2013.

D. We have decided to adopt a phase-in for the MDB test, and align the phase-in schedule with the oblique pole test requirements, with advance credits. In our test program, the SID–IIs in the rear seat of several vehicles measured elevated rib deflections and high pelvic loads that did not meet the injury criterion. This information indicated that structural and/or other changes to the rear seat of some vehicles are needed to provide improved chest and pelvic protection in the MDB test. An aligned phase-in will allow manufacturers to optimize engineering resources to design vehicles that meet the MDB and pole test requirements simultaneously, thus reducing costs. Manufacturers will also be able to use credits to more efficiently distribute their resources to meet the requirements.

E. For this final rule, the agency has re-examined the baseline fleet conditions projected to the compliance date of this final rule and has therefore adjusted the target population that would benefit from this rulemaking. In determining the target population for this final rule, the agency has assumed a 100 percent Electronic Stability Control (ESC) penetration in the model MY 2011 new vehicle fleet, and has further adjusted the estimated benefits of the rule by considering data from vehicle manufacturers on their planned installation of side air bags and on projected sales through model year MY 2011. Based on that information, the agency estimates that this rulemaking will save 311 fatalities and 361 serious injuries a year.[12] These values are lower than the NPRM's estimated benefits of 1,027 fatalities and 999 serious injuries saved annually, because the proposed estimates were based on the distribution of the different types of side air bag systems in the MY 2003 new vehicle fleet and did not assume 100% ESC penetration.

For this final rule, because the agency has used more extensive information, including manufacturers' planned installation of side air bags through MY 2011, the cost estimates of this final rule are also lower than those of the NPRM. The average vehicle incremental cost of the curtain and thorax bag two-sensor countermeasure is estimated to increase the average vehicle cost by $33, which is lower than the estimated NPRM cost of $177 per vehicle.

c. Congressional Mandate

On August 10, 2005, President Bush signed the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' (SAFETEA–LU), Public Law 109–59 (Aug. 10, 2005; 119 Stat. 1144), to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes. Section 10302(a) of SAFETEA–LU provides:

Sec. 10302. Side-Impact Crash Protection Rulemaking

(a) Rulemaking.—The Secretary shall complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes. The Secretary shall issue a final rule by July 1, 2008.

At the time of the enactment of § 10302(a), the agency's notice of proposed rulemaking to upgrade FMVSS No. 214 was pending. This final rule completes the rulemaking proceeding under consideration, and enhances the side impact protection of all the seating positions that the NPRM had proposed to upgrade.[13] In this rulemaking, we considered several regulatory alternatives (see Chapter IX of the Final Regulatory Impact Analysis) and, consistent with Executive Order 12866, have maximized the benefits of those alternatives in the cost effective range.

We interpret SAFETEA–LU as providing us a fair amount of discretion. This regulation was initiated by NHTSA prior to enactment of SAFETEA–LU and we are required by the statute to complete it. We believe that SAFETEA–LU requires us to enhance the occupant protection of all seating positions under

[12] This estimates that window curtains, thorax side impact air bags, and two sensors per vehicle will be used.

[13] Enhancing the protection of the seating positions under consideration in the NPRM addresses over 99% of the non-rollover side impact fatalities. In our analysis of vehicle sales, we found that 0 percent of passenger cars and 22 percent of light trucks have 3 or more rows of seats (minivans, some SUVs, and some full size vans). Assuming that passenger cars and light trucks each have 50 percent of all light vehicle sales, about 11 percent of all light vehicle sales will involve vehicles with 3 or more rows of seating. Looking at adult fatalities in side impacts in which non-rollovers were the primary event, there were 17 fatalities in the 3rd, 4th, or 5th rows. In comparison, in the same types of non-rollover side impacts, there were 8,570 adult fatalities in all rows. The 3+ row seats comprise 0.2 percent of the fatalities in that population (17/8,570 = 0.002).

consideration in the NPRM (front and rear outboard seating positions), without specifying the particular regulatory instruments or approaches that should be used to enhance occupant protection in those seating positions. SAFETEA–LU requires that this rulemaking be conducted in compliance with the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30101 *et seq.*), which includes the directive that our motor vehicle safety standards ''shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms' (49 U.S.C. 30111(a)). Thus, in responding to the comments to the NPRM (see section VI of this preamble), we must ensure that the upgraded FMVSS No. 214 final rule meets the criteria of Section 30111 (that it is practicable, that it meets the need for safety, and that it is stated in objective terms), while meeting the instruction of SAFETEA–LU that the final rule enhance occupant side impact protection in the seating positions under consideration in the NPRM.

This final rule enhances side impact protection in the front seating positions by requiring manufacturers to provide head protection in side impacts for the first time in the Federal safety standards. Due to the biofidelity of the current side impact dummy (SID) head and neck, the agency had determined that it was not appropriate to assess head injury with that dummy.[14] This final rule adopts into FMVSS No. 214 two technologically advanced test dummies that have superior injury risk measurement capabilities compared to the SID, including the ability to assess the likelihood of head injury. The two test dummies represent occupants of different sizes: One represents an occupant of the size of a 5th percentile adult female, the other a mid-size (50th percentile) adult male. Use of both dummies in FMVSS No. 214 assures that occupant protection in side impacts is afforded across a wide range of occupant sizes. Further, this final rule adopts a dynamic pole test into FMVSS No. 214, specifying performance requirements that vehicles must meet when tested with the test dummies. Adoption of the pole test will result in the installation of new technologies, such as side curtain air bags and torso side air bags, which are capable of improving protection to an occupant's head, thorax, abdomen and pelvis. The use of the two crash test dummies in the pole test will require manufacturers to assure whole-body protection of front seat occupants, from small stature females sitting as close as they can to the steering wheel, to mid-size males sitting mid-track.

The final rule also enhances front seat occupant protection by specifying use of the new mid-size male dummy in the standard's MDB test, which simulates a vehicle-to-vehicle crash. With its highly developed instrumentation and ability to assess rib deflections, the ES–2re will more thoroughly evaluate the degree to which manufacturers have designed vehicles' front seats to protect occupants in vehicle-to-vehicle side crashes.

This final rule enhances occupant crash protection in rear seats as well. For the first time in the Federal motor vehicle safety standards, a limit is adopted on the risk of head injury for rear seat occupants. In addition, this final rule specifies the use of the 5th percentile adult female test dummy in testing rear seats in the MDB test of FMVSS No. 214. This change will enable NHTSA to assess better the ability of the rear seat environment to protect children, the elderly and small adults—a more vulnerable population than the mid-size adult male population—in vehicle-to-vehicle crashes. The dummy is more representative of rear seat occupants than the SID. Further, the injury assessment reference values we will use with the dummy are set at levels that reflect the effect of aging on tolerance.

II. Safety Need

In the 2004 Fatality Analysis Reporting System (FARS), there were 9,270 side impact fatalities. For our target population, as described in the Final Regulatory Impact Analysis (FRIA) for this final rule, we excluded from these side impact fatalities those cases which were not relevant to the oblique pole and/or MDB crash conditions of this final rule. This left us with a target population of 2,311 fatalities and 5,891 non-fatal serious to critical MAIS 3–5 injuries for near-side occupants. The 2,311 fatalities were divided into two groups for the analysis: (1) Vehicle to pole impacts; and (2) vehicle-to-vehicle or other roadside objects impacts, which include partial ejections in these cases.[15]

In this target population, 41 percent of the total fatalities are caused by head/face injuries, 34 percent by chest injuries and 6 percent by abdominal injuries. In contrast, for the 5,891 non-fatal MAIS 3–5 target population, chest injuries are the predominate and maximum injury source, accounting for 48 percent. Head/face injuries account for 20 percent, and abdominal injuries account for two percent. Combining all serious to fatal injuries, chest injuries account for 49 percent, head/face injuries account for 26 percent, and abdominal injuries account for three percent.

For these two groups, we made an adjustment for estimated benefits that would result from the installation of Electronic Stability Control (ESC) systems in vehicles, based on an assumption that model year 2011 vehicles would be equipped with ESC.[16] The ESC adjustment is shown below in Table 1:

TABLE 1.—TARGET POPULATION ADJUSTED WITH ESC

[Fatalities and MAIS 3+ for occupants, Delta–V Range of 12–25 mph]

Crash mode	MAIS 3	MAIS 4	MAIS 5	Fatal
Veh-to-Pole	368	210	72	219
Veh-to-Veh/others	3,713	903	177	1,823
Total	4,081	1,113	249	2,042

[14] Report to Congress, ''Status of NHTSA Plan for Side Impact Regulation Harmonization and Upgrade,'' March 1999, Docket NHTSA–98–3935–10.

[15] The agency's analysis also found some fatality benefits for far-side unbelted occupants. In 2004 FARS, there were 1,441 unbelted far-side occupant fatalities in side impacts.

[16] Manufacturers' product plans submitted to the agency indicated that 71 percent of the MY 2011 light vehicles will be equipped with ESC. For the purposes of estimating benefits for today's final rule, we have assumed that more vehicles will be ESC-equipped, in part because the final rule on electronic stability control systems requires all MY 2012 vehicles to have ESC (Docket 27662). Accordingly, to estimate benefits for this FMVSS No. 214 final rule, we have assumed 100 percent of the MY 2011 light vehicles will have ESC.

We also made an adjustment based on the estimated benefits that would result from the FMVSS No. 201 upper interior requirements for the A–pillar, B–pillar, and roof side rail.[17] For the head, chest, abdomen and pelvis injuries, the fatalities for each crash mode, as adjusted for the effects of ESC and FMVSS No. 201, are shown below in Table 2:

TABLE 2.—FATALITIES ADJUSTED, FRONT OCCUPANTS WITH ESC AND FMVSS NO. 201 HEAD, CHEST, ABDOMEN AND PELVIS

Crash mode	Head	Chest	Abdomen	Pelvis	Total
Veh-to-Pole	142	27	0	0	169
Veh-to-Veh/others	493	689	137	63	1,382
Total	635	716	137	63	1,551

III. NPRM

a. Summary of Main Aspects of the Proposal Preceding This Final Rule

NHTSA published the NPRM for this FMVSS No. 214 final rule on May 17, 2004 (69 FR 27990, Docket No. 17694). The NPRM provided a 150-day comment period on the proposal. The 150-day period closed October 14, 2004.

1. Oblique Pole Test

The NPRM proposed a pole test for FMVSS No. 214, and proposed to apply it to all passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less. The vehicle-to-pole test is similar to but more demanding than the one currently used optionally in FMVSS No. 201. The proposal was to propel a vehicle sideways into a rigid pole at an angle of 75 degrees rather than the 90-degree angle used in FMVSS No. 201.[18] (We refer to the test using the 75-degree impact angle as the ''oblique pole test.'') The test speed was proposed as any speed up to 32 km/h (20 mph) [19] rather than the maximum test speed of FMVSS No. 201's optional pole test (29 km/h (18 mph)). The 75-degree angle of impact and 32 km/h test speed made the pole test more representative than the FMVSS No. 201 test of real world side crashes into narrow objects.[20] Crashes with a delta-V of 32 km/h (20 mph) or higher result in approximately half of the seriously injured occupants in narrow object near-side crashes.

The NPRM proposed using the ES–2re (50th percentile adult male) test dummy, and the SID–IIs (5th percentile adult female) test dummy as modified by the addition of floating rib guide (FRG) modifications.

The ES–2re is technically superior to both the SID–H3 50th percentile male test dummy currently used in the optional pole test of FMVSS No. 201 and the SID dummy now used in the MDB test of FMVSS No. 214. NHTSA proposed injury criteria for the ES–2re's injury measuring instrumentation of the dummy's head, thorax, abdomen and pelvis. HIC was to be limited to 1,000 measured in a 36 millisecond time interval (HIC_{36}). Chest deflection could not be greater than 42 mm (1.65 in) for any rib. Resultant lower spine acceleration could not be greater than 82 g. Abdominal loads could not exceed 2,500 Newtons (N) (562 lb). For pelvic injury, the NPRM proposed to limit pubic symphysis force to 6,000 N (1,349 lb).

The SID–IIs test dummy was developed by the Occupant Safety Research Partnership (OSRP), a research group under the umbrella of the U.S. Council for Automotive Research (USCAR).[21] NHTSA proposed to modify the dummy by adding the FRG modifications (the modified dummy is referred to as the SID–IIsFRG). Injury criteria for the SID–IIsFRG's head, thorax, and pelvis were proposed. HIC_{36} was to be limited to 1,000. For thoracic injury, the agency proposed a limit of 82 g on the resultant lower spine acceleration. A pelvic injury criterion of the sum of the iliac and acetabular forces measured on the dummy was proposed at 5,100 N. A limitation on rib deflection was not proposed because NHTSA wanted to obtain more information on the SID–IIsFRG's rib deflection measurement capability and the deflection criteria that would be appropriate to apply to the dummy. For the same reasons, an abdominal injury criterion for the dummy was not proposed.

The NPRM presented test data from full scale oblique pole tests using a mid-size male dummy, and a small female dummy, to indicate the performance of vehicles in providing occupant protection in these side impacts. (These data are presented in Table 1 of Appendix C to this final rule.) As discussed in the NPRM, there were nine

[17] In 1995, NHTSA issued a final rule amending FMVSS No. 201, ''Occupant protection in interior impact,'' to require passenger cars, and trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kg (10,000 lb) or less, to provide protection when an occupant's head strikes certain upper interior components, including pillars, side rails, headers, and the roof, during a crash. The amendments added procedures and performance requirements for a new in-vehicle test, which were phased in beginning in model year 1999.

[18] FMVSS No. 201 employs an optional pole test to permit the installation of dynamically deploying upper interior head protection systems. This test was part of a set of amendments adopted in 1998 to permit, but not require, the installation of dynamically deploying upper interior head protection systems that were then under development (63 FR 41451; August 4, 1998). In the optional crash test, the vehicle is propelled at a speed between 24 km/h (15 mph) and 29 km/h (18 mph) into a rigid pole at an angle of 90 degrees. The pole test injury criterion is HIC of 1000. The May 17, 2004 NPRM requested comment on adopting the FMVSS No. 201 pole test instead of the oblique pole test that was the preferred agency approach at the NPRM stage.

[19] While 20 mph converts to 32.2 km/h, we are rounding 32.2 km/h to 32 km/h.

[20] When testing the driver side of the vehicle, an impact reference line is drawn on the vehicle's exterior where it intersects with a vertical plane passing through the head CG of the seated driver dummy at an angle of 75 degrees from the vehicle's longitudinal centerline measured counterclockwise from the vehicle's positive X axis (see S10.14 of the regulatory text set forth in today's document). When testing the front passenger side, the impact reference line would be drawn where it intersects with a vertical plane passing through the head CG of the passenger dummy seated in the front outboard designated seating position at an angle of 285 degrees from the vehicle's longitudinal centerline measured counterclockwise from the vehicle's positive X axis as defined in S10.14 of today's regulatory text. The vehicle is aligned so that, when the pole contacts the vehicle, the vertical center line of the pole surface as projected on the pole's surface, in the direction of the vehicle motion, is within a surface area on the vehicle exterior bounded by two vertical planes in the direction of the vehicle motion and 38 mm (1.5 inches) forward and aft of the impact reference line. The test vehicle would be propelled sideways into the pole. Its line of forward motion would form an angle of 75 degrees (or 285 degrees) (±3 degrees) in the left (or right) side impact measured from the vehicle's positive X axis in the counterclockwise direction.

[21] USCAR consists of DaimlerChrysler, Ford and General Motors. The SID–IIs is used by Transport Canada for research purposes, and by the Insurance Institute for Highway Safety (IIHS), a nonprofit group funded by insurers, in IIHS's 48 km/h (30 mph) side crash test consumer information program.

tests using a mid-size male dummy. In four of the tests, the test dummy was positioned in the driver's seating position as specified in the FMVSS No. 214 MDB test procedure, i.e., the seat was positioned mid-track. The other tests were conducted with the seat positioned as specified in FMVSS No. 201.[22] Among other things, the NPRM data showed that the vehicles with air curtain systems performed well in providing head protection to occupants of the size of a 50th percentile adult male. Data for the 2004 Honda Accord demonstrated the practicability of meeting all of the NPRM's proposed injury criteria for the pole test using the FMVSS No. 214 seating procedure with the ES–2re dummy.

As discussed in the NPRM, one of the tests of a combination head/chest air bag system illustrated how the impact angle of the pole test can influence the level of protection provided by a vehicle's side air bags. An oblique pole test of a 1999 Nissan Maxima with a head/chest side impact air bag resulted in a HIC score of 5,254. The HIC of the Maxima in a 90-degree FMVSS No. 201 pole test resulted in a HIC score of 130. In the NPRM, NHTSA stated its expectation that, to comply with the proposed oblique pole test requirements, manufacturers will likely install head protection systems extending sufficiently toward the A-pillar to protect the head in the 75-degree approach angle test. The agency also noted that a 32 km/h (20 mph) oblique pole test has at least 15 percent more kinetic energy than an FMVSS No. 201 90-degree pole test at 18 mph.[23]

The NPRM also discussed the results of three full scale oblique pole tests using the small female dummy on a 2003 Camry with an air curtain and thorax bag, a 2000 Saab 9–5 with a combination bag, and a 2002 Ford Explorer (see Table 2 of Appendix C). The agency stated that in the NPRM that the HIC_{36} values generally exceeded the 1,000 limit, and pelvic forces exceeded the proposed 5,100 N limit. In contrast, a 2003 Camry whose air curtain and thorax bags were remotely fired at 11 milliseconds (ms) produced a HIC_{36} of 512, and a 4,580 N pelvic force on the dummy.

2. Moving Deformable Barrier (MDB) Test

The current MDB test uses a 50th percentile adult male test dummy that was developed in the 1980s, and does not use a 5th percentile female dummy in the test. The NPRM proposed replacing the 50th percentile male dummy used with the technically advanced, more biofidelic ES–2re, and adding to the test the small female test dummy. For the first time in the MDB test, a head injury criterion was proposed.

The NPRM presented test results from FMVSS No. 214 MDB tests of a 2001 Ford Focus and a 2002 Chevrolet Impala using an ES–2re dummy in the driver and rear passenger seating positions (the data are set forth in Appendix C). These vehicles did not have side air bags in either front or rear seating positions. The test data from the NPRM showed that the Focus met the proposed test requirements when tested with the ES–2re, while the Impala did not. The Impala failed to meet the 44 mm rib deflection criterion for the driver dummy (45.6 mm), and produced an abdominal force on the rear seat dummy of 4,409 N (proposed limit was between 2,400–2,800 N). An examination of the passenger compartment interior revealed a protruding armrest of the Impala that contacted the abdominal area of the dummy, causing the high force reading.

As discussed in the NPRM, tests of a 2001 Ford Focus and 2002 Chevolet Impala using the SID–IIsFRG in the driver and rear passenger seating positions showed that the Focus almost fully complied with the proposed MDB test requirements. Only the pelvic force for the driver dummy was exceeded in the test, which was attributed to an intruding armrest. The Impala was able to meet all of the driver injury criteria but failed to meet the limits on lower spine acceleration and pelvic force for the SID–IIs in the rear seat, due to an armrest design. As discussed in the NPRM, in an MDB test of a 2001 Buick Le Sabre equipped with a front seat thorax side air bag, the vehicle met all the proposed criteria for both the front and rear seat dummies.

3. Lead Time

A. Oblique Pole Test

The agency proposed a lead time thought to be sufficient to ensure that compliance would be practicable, while seeking to make sure that the benefits of the rule can be realized as soon as practicable. The NPRM proposed to phase in the upgraded side impact pole test requirements. The agency proposed to phase in the new test requirement beginning approximately four years from the date of publication of a final rule. The phase-in was proposed to be over three years, in accordance with the following schedule:

20 percent of each manufacturer's light vehicles manufactured during the production year beginning four years after publication of a final rule;

50 percent of each manufacturer's light vehicles manufactured during the production year beginning five years after publication of a final rule;

All vehicles manufactured on or after a date six years after publication of a final rule.

NHTSA proposed to include provisions under which manufacturers can earn credits toward meeting the applicable phase-in percentages if they meet the new requirements ahead of schedule. Alternatives were also provided to address the special problems faced by manufacturers producing limited line vehicles and vehicles manufactured in more than one stage, and vehicle alterers. Reporting and recordkeeping requirements for manufacturers to administer conformance with the phase-in were also proposed.

B. MDB Test

NHTSA proposed that the upgraded MDB test would be effective approximately 4 years after publication of a final rule. The agency tentatively concluded that a phase-in was unnecessary because the requirements could be met by padding and simple redesigns of the armrest area. This contrasted with the agency's belief about the vehicle changes entailed by the oblique pole test. Comments were requested on whether a phase in for the MDB test was appropriate.

b. NPRMs on 49 CFR Part 572

The agency issued notices of proposed rulemaking to add the specifications and performance requirements for the ES–2re dummy and for the SID–IIs dummy into the agency's regulation on anthropomorphic test devices (49 CFR part 572). The NPRM on the ES–2re dummy was published on September 15, 2004 (69 FR 55550; Docket 18864), and the NPRM on the SID–IIs was published on December 8, 2004 (69 FR 70947, Docket 18865).

[22] Under the FMVSS No. 201 seating procedure, the dummy's head is positioned such that the point at the intersection of the rear surface of its head and a horizontal line parallel to the longitudinal centerline of the vehicle passing through the head's center of gravity is at least 50 mm (2 in) forward of the front edge of the B-pillar. If needed, the seat back angle is adjusted, a maximum of 5 degrees, until the 50 mm (2 in) B-pillar clearance is achieved. If this is not sufficient to produce the desired clearance, the seat is moved forward to achieve that result.

[23] Test results using the FMVSS No. 201 pole test procedures were presented in the NPRM, 69 FR at 28008.

c. Comment Periods Reopened Until April 12, 2005; Request for Comment

On January 12, 2005, NHTSA reopened the comment period for the May 17, 2004 NPRM on FMVSS No. 214 and for the September 15, 2004 NPRM adding the ES–2re 50th percentile adult male dummy to 49 CFR Part 572 (70 FR 2105; Dockets 17694 and 18864). That action responded to a petition from the Alliance of Automobile Manufacturers that requested an additional 8 months to submit comments. NHTSA determined that a 90-day extension of time was sufficient and that an 8-month extension was unwarranted and contrary to the public interest. The January 2005 document also requested comments on an addendum to an initial regulatory flexibility analysis (IRFA) relating to the NPRM on the oblique pole test. The addendum to the IRFA discussed the economic impacts of the proposed rule on small vehicle manufacturers. The comment periods were reopened until April 12, 2005.

Later, the Alliance petitioned to extend the comment period for the December 8, 2004 NPRM on adding the SID–IIs 5th percentile female test dummy to 49 CFR Part 572, which was scheduled to close on March 8, 2005. NHTSA agreed to extend the comment period for that NPRM to April 12, 2005, to align the comment closing date for that NPRM with the comment closing dates for the NPRMs on FMVSS No. 214 and the ES–2re (70 FR 11189; March 8, 2005; Docket 18865).

IV. NHTSA 214 Fleet Testing Program

In 2005, the agency conducted a 214 fleet testing program, a series of side impact crash tests to obtain information on how current vehicles performed in the oblique pole and MDB tests with the SID–IIs and ES–2re test dummies, and, in turn, on how the dummies performed in the full vehicle crash tests. Fourteen vehicle models were tested. Thirteen models were evaluated in the pole test, 10 of these 13 were tested with both the SID–IIs (5th percentile female) and the ES–2re (50th percentile male) test dummies. Three of the 13 were tested with just the ES–2re test dummy. Seven of the 13 were tested also to the MDB tests using the SID–IIs and the ES–2re test dummies. One vehicle model was tested only to an MDB test using the SID–IIs (5th percentile female) test dummy. (See Table 3, ''Test Matrix.'')

The agency selected vehicles that represented different vehicle classes comprising the current vehicle fleet. Six rated a ''Good'' or ''Acceptable'' score in IIHS's side impact consumer rating program,[24] three rated a ''Poor,'' and all had head curtains or combination side impact air bags. Six of the vehicles had a combination of both a head curtain air bag and an additional torso air bag in the front seating positions. Four had only a head curtain air bag. Four vehicles had a seat-mounted head and torso combination air bag system, two of which were convertibles.

TABLE 3.—TEST MATRIX

Vehicles (model year 2005 unless noted)	Side air bag type: AC=air curtain; Comb=head/chest SIAB; Th=thorax or chest SIAB	Vehicle class/weight	Oblique pole		FMVSS No. 214 MDB	
			SID–IIs	ES–2rd	SID–IIs	ES–2re
Toyota Corolla	AC + Th	Light PC	√	√	√	√
VW Jetta	AC + Th	Compact PC	√	√	√	√
Saturn Ion	AC	Compact PC	√	√	√	√
Honda Accord*	AC + Th	Medium	√	√	√	√
Suzuki Forenza	Comb	Compact PC			√	
Beetle Convertible	Comb	Medium		√		
Saab 9–3 Convertible	Comb	Medium		√		
Ford 500	AC + Th	Heavy PC	√	√	√	√
Toyota Sienna*	AC + Th	Minivan	√	√		
Subaru Forester	Comb	Small sport utility vehicle (SUV) (certified PC) Curb wt=3143 lb (medium PC).	√	√	√	√
Honda CRV	AC + Th	Small SUV	√	√	√	√
Chevy Colorado (4x2 Ext. Cab)	AC	Small Pickup	√	√		
Ford Expedition	AC	Large SUV	√	√		
Dodge 2500 (Reg Cab)	AC	Large Pickup		√		

*2004 Vehicles.
** Vehicles were categorized by their curb weight.

Light passenger car (PC) = (907–1.133 kg) or (2,000–2,499 lb).

Compact PC = (1,134–1,360 kg) or (2,500–2,999 lb).

Medium PC = (1,361–1,587 kg) or (3,000–3,499 lb).

Heavy PC = (1,588 kg or more) or (3,500 lb or more).

A detailed summary of the results of the test program is set forth in NHTSA's technical report of the test program, ''NHTSA Fleet Testing for FMVSS No. 214 Upgrade MY 2004–2005,'' April 2006, (Docket 25441, items 9 and 11). Key findings of the test program are highlighted below.

Oblique Pole Test With SID–IIs

As discussed in the test report, 10 of the vehicles in the matrix were tested with the SID–IIs dummy in the oblique pole test. The test results are presented in Table 4. Thoracic and abdominal rib deflections were monitored.

[24] IIHS's side impact consumer information program ranks vehicles based on performance when impacted perpendicularly by a moving barrier at about 30 mph. *http://www.iihs.org/ratings/side_test_info.html.*

TABLE 4.—OBLIQUE POLE TEST RESULTS—SID–IIS DUMMY

Driver	HIC36	Lower spine (Gs)	Pelvic force (N)	Thorax deflection (mm) (monitored)	Abdominal deflection (mm) (monitored)
Proposed Injury Assessment Reference Values (IARVs)	1000	82	** 5,525	38	45
Toyota Corolla	418	70	***	47	49
VW Jetta	478	54	7876	33	34
Saturn Ion	5203	110	5755	32	52
Honda Accord*	567	63	10848	31	30
Ford Five Hundred	1173	92	6542	37	57
Toyota Sienna*	2019	67	6956	46	58
Subaru Forester	160	55	4707	31	45
Honda CRV	531	68	4670	26	36
Chevy Colorado 4x2 ext cab	896	135	9387	31	59
Ford Expedition	5661	96	8249	35	53

* MY2004.
** See Section VI.d.4.B of this preamble for a discussion of why we increased the proposed 5,100 N requirement to 5,525 N.
*** No data.

Most of the tested vehicles will need some design improvements to be certified as meeting the injury criteria limits for HIC, lower spine acceleration and/or pelvic force adopted by this final rule. Some vehicles will need more redesign than others. Some vehicles produced HIC, lower spine acceleration and/or pelvic force values that were greater than the injury assessment reference values (IARVs) of this final rule, while others were within the values but were close to the margin. For purposes of evaluating the current performance of these tested vehicles in relation to the IARVs of this final rule, we identified ''elevated'' values to be those that were within 80 percent of an IARV. The Subaru Forester and Honda CRV were the only vehicles that were below the IARVs,[25] but even these vehicles had lower spine acceleration and/or pelvic loads that were elevated (in excess of 80 percent of the IARVs).

HIC (SID–IIs in the Pole Test)

Four of the 10 vehicles tested with the SID–IIs (40 percent) exceeded HIC 1000: the Saturn Ion, Ford Five Hundred, Toyota Sienna, and Ford Expedition.

The Saturn Ion, Ford Expedition, and the Toyota Sienna's side curtain air bag deployed but the SID–IIs dummy's head hit the front edge of the curtain's front pocket or tethered portion of the curtain, which was not inflated so as to cushion the impact.

The Ford Five Hundred had a head curtain and a thorax bag. It appears from test film that the Ford Five Hundred's sensor deployed the curtain at approximately 85 ms after time zero, while the dummy's head hit the pole at the front edge of the curtain at approximately 60 ms after time zero.

The same four vehicles produced relatively good HIC scores with the ES–2re dummy in the oblique pole test.

Lower Spine Acceleration (SID–IIs in the Pole Test)

The lower spine acceleration readings were generally consistent with the SID–IIs's rib deflections. Two of the 10 vehicle tests with the SID–IIs resulted in rib deflection measurements exceeding 38 mm for the thoracic rib (which corresponds to a 50 percent risk of AIS 3+ injury). Six out of 10 exceeded 45 mm for the abdominal rib (45 mm is used by IIHS in its consumer information program). In all of these tests, the lower spine acceleration values were also elevated (exceeding 82 g or within 80 percent of 82 g (i.e., 66 g)). The 6 tests were of the: 2005 Toyota Corolla, 2005 Saturn Ion, 2005 Ford Five Hundred, 2004/05 Toyota Sienna, 2005 Chevy Colorado 4x2 extended cab, and the 2005 Ford Expedition.

Pelvic Force (SID–IIs in the Pole Test)

Seven of the 10 vehicles exceeded 5,525 N (one vehicle lost data completely). The Honda Accord and the Volkswagen (VW) Jetta exceeded 5,525 N, yet had relatively lower numbers for the other injury criteria.

Oblique Pole Test With ES–2re

Thirteen tests were performed with the ES–2re dummy in the driver's seating position. Data from the tests are set forth in Table 5. The data were analyzed assuming a 44 mm limit on rib deflection and a 2,500 N limit for abdominal force. Four vehicles produced results that were less than all of the injury assessment reference values: the VW Jetta, VW Beetle convertible, Saab 9–3 convertible and the Honda Accord.

TABLE 5.—ES–2RE OBLIQUE POLE RESULTS

Driver	HIC 36	Thorax deflection (mm)	Abdominal force (N)	Pelvic force (N)	Lower spine (G's) (monitored)
Proposed IARVs	1000	44	2500	6000	82
Toyota Corolla	473	50	1178	3041	65
VW Jetta	652	36	1663	3372	60
Saturn Ion	806	50	1494	1585	76
Honda Accord	446	31	1397	2463	52
VW Beetle Convertible	315	37	1018	3815	69
Saab 93 Convertible	254	40	841	2914	49
Ford 500	422	35	3020	2133	68

[25] The Toyota Corolla was also below the IARVs, for the data collected. However, the pelvic force data were not available in the test. Like the Subaru Forester and Honda CRV, the lower spine acceleration was elevated in the test.

TABLE 5.—ES–2RE OBLIQUE POLE RESULTS—Continued

Driver	HIC 36	Thorax deflection (mm)	Abdominal force (N)	Pelvic force (N)	Lower spine (G's) (monitored)
Toyota Sienna	667	47	1751	2127	60
Subaru Forester	2054	43	1377	2291	46
Honda CRV	639	50	929	903	53
Chevy Colorado 4x2 ext cab	785	46	2655	3373	90
Ford Expedition	689	26	6973	2575	75
Dodge Ram 2500 (GVWR 8800)*	5748	47	1846	**	86

* Air bag did not deploy.
** No data.

HIC (ES–2re in the Pole Test)

The tests showed that an effective inflatable head protection system can be successful in reducing HIC.

Most HIC values were less than HIC 1,000. An exception was the Subaru Forester, the test of which resulted in a HIC reading of 2,054. This vehicle had a head and thorax combination air bag that deployed from the vehicle's seat. In the test, the air bag was pushed rearward by the intruding B-pillar and door structure. As a result, the dummy's head hit the pole, causing the HIC of 2,054.

Another exception was the Dodge 2500, which is the only heavy duty pickup truck with optional side curtains. In the pole test, the curtain air bag did not deploy, causing the ES–2re dummy's head to hit the pole (HIC 5,748). In a retest using this vehicle model in which the air bags were remotely deployed, the HIC was 331.

Rib Deflection (ES–2re in the Pole Test)

Table 5 shows that six of the vehicles produced chest deflection values greater than 44 mm (the Toyota Corolla, Saturn Ion, Toyota Sienna, Honda CRV, Chevy Colorado extended cab pick up, and the Dodge 2500 truck). In another vehicle, the Subaru Forester, the ES–2re measured 43 mm of chest deflection. Out of those seven vehicles, three had curtains with thorax bags: the Toyota Corolla, Toyota Sienna and Honda CRV. The Forester had a combination head/thorax bag. The Ion, Chevy Colorado and Dodge 2500 had only a curtain.

Seven vehicles produced results that were under 44 mm (VW Jetta, Honda Accord, VW Beetle convertible, Saab 9–3 convertible, the Ford Five Hundred, Subaru Forester, and the Ford Expedition). However, the chest deflection measures for five of these vehicles (VW Jetta, VW Beetle convertible, Saab 9–3 convertible, Ford Five Hundred, and the Subaru Forester) were between 35 and 44 mm (i.e., were within 80 percent of 44 mm). The VW Jetta, Honda Accord, and Ford Five Hundred had a curtain and torso bag. The VW Beetle and Saab 9–3, in addition to the Subaru Forester, had combo bags. The Ford Expedition had only a curtain.

Lower Spine Acceleration (ES–2re in the Pole Test)

The ES–2re's lower spine acceleration readings in the pole test were relatively consistent with the dummy's rib deflection readings.

In eleven of the vehicles that measured high rib deflections exceeding 44 mm or that were within 80 percent of 44 mm, 5 of these had lower spine acceleration values that were also elevated (exceeding 82 g or within 80 percent of 82 g). The 5 vehicles were the: Saturn Ion, VW Beetle, Ford Five Hundred, Chevy Colorado and the Dodge 2500. The Toyota Corolla had an elevated lower spine acceleration of 65 g. The lower spine acceleration of the ES–2re was elevated (75 g) in the test of the Ford Expedition when the dummy's rib deflection was low (26 mm). However, the lower spine could have been detecting the high abdominal force reading on the ES–2re in that test (6,973 N).

Abdominal Force (ES–2re in the Pole Test)

Three vehicles produced abdominal force readings that exceeded 2,500 N (the Ford Five Hundred, Chevy Colorado and the Ford Expedition). The Chevy Colorado and Ford Expedition did not have torso air bags.

MDB Tests With SID–IIs

We conducted eight FMVSS No. 214 MDB tests with the SID–IIs in both the driver's seating position and in the left rear occupant's seating position. Data from the tests are set forth in Table 6 (driver) and Table 7 (rear passenger).

The data show that all but three vehicles produced dummy measurements that were below the proposed IARVs for both the driver and rear occupant. The SID–IIs in the driver seat of the Saturn Ion test measured a 8,993 N pelvic force. The Saturn Ion was not equipped with a thoracic side bag. It appears from the test film that the dummy's pelvis impacted a rigid area at the front part of the Ion's armrest. The SID–IIs in the rear seat of the Honda Accord measured 6,917 N in pelvic force, and the SID–IIs in the rear seat of the Suzuki Forenza measured a 6,557 N pelvic force.

In tests of 4 of the vehicles with the SID–IIs in the rear, the monitored rib deflection measurements were high (over 38 mm for the thoracic rib and 45 mm for the abdominal rib), and in 2 vehicles they were within 80 percent of 38 mm or 45 mm.

TABLE 6.—MDB TEST RESULTS USING THE SID–IIS—DRIVER

Driver	HIC36	Lower spine (Gs)	Pelvic force (N)	Thorax deflection (mm) (monitored)	Abdominal deflection (mm) (monitored)
Proposed IARVs	1000	82	5525	38	45
Toyota Corolla	78	59	4655	17	26
VW Jetta	46	30	2639	12	18
Saturn Ion	189	53	8993	19	39
Suzuki Forenza	69	53	4948	27	27

TABLE 6.—MDB TEST RESULTS USING THE SID–IIS—DRIVER—Continued

Driver	HIC36	Lower spine (Gs)	Pelvic force (N)	Thorax deflection (mm) (monitored)	Abdominal deflection (mm) (monitored)
Honda Accord*	104	50	4150	20	22
Ford 500	46	31	2140	16	25
Subaru Forrester	43	37	3066	11	11
Honda CRV	38	32	1350	16	8

* MY 2004.

TABLE 7.—MDB TEST RESULTS USING THE SID–IIS—LEFT REAR PASSENGER

Passenger	HIC36	Lower spine (Gs)	Pelvic force (N)	Thorax deflections (mm) (monitored)	Abdominal deflections (mm) (monitored)
Proposed IARVs	1000	82	5525	38	45
Toyota Corolla	330	57	3182	35	33
VW Jetta	103	52	3026	49	43
Saturn Ion	220	73	3964	47	52
Suzuki Forenza	773	73	6557	41	46
Honda Accord*	298	57	6917	30	32
Ford 500	216	42	2925	45	46
Subaru Forrester	150	43	3572	24	26
Honda CRV	107	56	3149	37	40

* MY 2004.

MDB Test With ES–2re

We conducted seven FMVSS No. 214 MDB tests with the ES–2re in both the driver's seating position and in the left rear occupant's seating position. The vehicle models were the same ones that were tested with the SID–IIs in the MDB tests, above. Data from the tests are set forth in Tables 8 and 9. The dummy responses were low relative to the IARVs.

TABLE 8.—ES–2RE MDB TEST RESULTS—DRIVER

Driver	HIC36	Thorax deflection (mm)	Abdominal force (N)	Pubic symph. force (N)	Lower spine (G's) (monitored)
Proposed IARVs	1000	44	2500	6000	82
Toyota Corolla	73	25	722	3223	40
VW Jetta	101	26	733	1969	28
Saturn Ion	110	29	1524	2431	52
Honda Accord	109	37	557	1983	38
Ford 500	66	25	1006	1176	35
Subaru Forrester	44	21	598	1694	33
Honda CRV	100	35	524	1137	31

TABLE 9.—ES–2RE MDB TEST RESULTS—REAR PASSENGER

Passenger	HIC36	Thorax deflection (mm)	Abdominal force (N)	Pubic symph. force (N)	Lower spine (G's) (monitored)
Proposed IARVs	1000	44	2500	6000	82
Toyota Corolla	248	20	1355	2771	58
VW Jetta	211	29	1378	2542	53
Saturn Ion	168	27	1511	2275	47
Honda Accord	223	23	810	2405	53
Ford 500	213	25	1649	1407	44
Subaru Forrester	226	23	967	1948	35
Honda CRV	126	5	1192	1847	33

General Observations

NHTSA has made the following general observations from the agency's 214 fleet testing program.

• Overall, currently installed side impact head protection systems (HPS) consisting of an air curtain or combination head/thorax air bag were effective in mitigating head accelerations, resulting in low to moderate HIC readings for the ES–2re and SID–IIs dummies in both MDB and

oblique pole tests. Vehicles equipped with well-designed combo bags, and air curtains that extend toward the A-pillar when inflated, generally were the better performers in the oblique pole tests.

• Some currently installed side impact HPS that provide relatively low head protection response values to the SID–IIs driver dummy in the MDB test do not necessarily provide the same low level head responses in the oblique pole test.

• In the oblique pole tests, vehicles that provided adequate protection for the ES–2re do not necessarily provide the same level of protection for the SID–IIs. The data show the importance of using more than one size test dummy to evaluate the overall performance of a vehicle in providing head protection to occupants in the oblique pole test mode.

• In oblique pole tests using the SID–IIs, most vehicles produced pelvic force readings above the proposed criterion. In the MDB tests with the SID–IIs seated in the driver's position, only one vehicle produced a pelvic force greater than 5,525 N. All other vehicles subjected to the MDB test with the SID–IIs seated in the driver's position had pelvic force readings below 5,525 N.

• The SID–IIs in the rear seats of vehicles subjected to the MDB test had elevated thoracic and/or abdominal rib deflections that were not observed in MDB tests of those same vehicles with the ES–2re in the rear seats.

• The results of oblique pole tests in which the air curtain did not deploy or deployed later in the event indicate needed air bag sensor improvement.

• The convertibles equipped with head/thorax combination air bags produced measurements that were below the proposed injury criteria, demonstrating the effectiveness and feasibility of these HPS for convertible body types.

• Some vehicles that received ''Good'' or ''Acceptable'' ratings from IIHS for the rear passenger exceeded proposed IARVs in our MDB tests using the SID–IIs.

• The vehicles that were tested with the ES–2re that produced dummy readings below the proposed IARVs in the pole and MDB tests were: 2004 Honda Accord, 2005 Volkswagen Jetta, 2005 Volkswagen Beetle Convertible, and the 2005 Saab 93 Convertible. The vehicles that were tested with the SID–IIs that produced readings below the proposed IARVs in the pole and MDB tests were: 2005 Toyota Corolla, 2005 Subaru Forester and the 2005 Honda CRV.

V. Summary of Comments

This section provides an overview of the significant comments to the proposal to upgrade FMVSS No. 214.

All together, NHTSA received 35 comments to the proposal to upgrade FMVSS No. 214.[26] Commenters included—

Vehicle manufacturers and/or vehicle manufacturer associations (the Alliance of Automobile Manufacturers (Alliance[27]), American Honda Motor Co., Inc. (Honda), the Association of International Automobile Manufacturers, Inc. (AIAM[28]), Nissan North America, Inc. (Nissan), Lotus Engineering (Lotus), Ferrari SpA (Ferrari), Maserati SpA (Maserati), the Recreation Vehicle Industry Association, Inc. (RVIA), Specialty Equipment Market Association (SEMA), the National Mobility Equipment Dealers Association (NMEDA) and the National Truck Equipment Association (NTEA));

Air bag equipment suppliers (Autoliv and TRW);

Research groups (IIHS), the International Harmonized Research Activities (IHRA) Side Impact Working Group (SIWG);

Consumer groups (Advocates for Highway and Auto Safety (Advocates), Public Citizen, and Consumers Union);

And private individuals.

Overview of the Comments

The vehicle manufacturers supported enhancing side impact protection but had concerns about how the proposed rulemaking would comport with the initiatives they have already undertaken or agreed to undertake towards that goal (e.g., the ''voluntary commitment'' of major automakers in the U.S. to phase in side air bags for drivers in vehicles up to 3,855 kg (8,500 lb) GVWR). The vehicle manufacturers strongly supported the incorporation of WorldSID[29] into FMVSS No. 214, marked by the Alliance submitting, concurrently with its comment on the FMVSS No. 214 NPRM, a petition for rulemaking asking NHTSA to initiate rulemaking to incorporate WorldSID into Part 572 and to use the dummy in the upgrade of FMVSS No. 214 (NHTSA Docket 17252). The Alliance further suggested that, prior to use of WorldSID, the ES–2 dummy should be used (without the rib extensions), and only to the extent of protecting the head. The Alliance believed that there was no safety need for the 5th percentile SID–IIs adult female crash test dummy in the proposed pole and MDB tests. No commenter supported the floating rib guide modifications proposed by NHTSA for the SID–IIs dummy.

Air bag supplier Autoliv supported use of the ES–2re in tests and supported use of the 32 km/h (20 mph) test speed in the oblique pole test. Autoliv stated that NHTSA was correct in its belief that an oblique pole test will encourage larger bags than a perpendicular pole test. Air bag supplier TRW believed that adoption of the NPRM will result in substantial reductions in injuries and severity in side impacts. TRW stated that technology exists to meet the proposed requirements of the NPRM within the timeframe and that it saw no major issues with the proposed test conditions. TRW believed that systems designed to meet the proposed requirements could have acceptable performance in out-of-position situations.

Vehicle manufacturers raised issues or had questions about aspects of conducting the proposed test procedure for the oblique pole test. The Alliance supported the 75-degree angle of the test, but suggested that the test speed should be bounded at 26 km/h to 32 km/h (16 to 20 mph) (the NPRM proposed that the test would be conducted at any speed up to and including 32 km/h (20 mph)). Maserati and Ferrari supported the 90 degree 29 km/h (18 mph) pole test used in the European New Car Assessment Program (Euro NCAP). The IHRA SIWG expressed concern about the NPRM preempting the outcome of international deliberations of the SIWG regarding the side impact pole test procedure. Vehicle manufacturers also commented on technical aspects of the test procedure, such as how the vehicle seat should be positioned along the seat track, where on the pole the vehicle should impact;

[26] The NPRMs proposing to add the ES–2re and SID–IIs dummy specifications to 49 CFR part 572 each received comments separately from the FMVSS No. 214 NPRM. Those comments are addressed in full in final rules that were published separately from this document and are discussed here to the extent relevant to the FMVSS No. 214 final rule.

[27] The Alliance is made up of BMW group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

[28] AIAM Technical Affairs Committee members are: Aston Martin, Ferrari/Maserati, Honda, Hyundai, Isuzu, Kia, Nissan, Peugeot, Renault, Subaru, Suzuki, Bosch, Delphi, Denso, and Hitachi.

[29] WorldSID is considered by industry to be the next-generation 50th percentile male side impact dummy. It was developed by industry representatives from the U.S., Europe and Japan and by the European and Japanese governments (see Docket No. 2000–17252). This future dummy is believed by its developers to have better biofidelity than existing dummies, and is intended to better predict a wider range of injury potential in side impact testing than current dummies.

and how the test dummies and head restraints should be positioned.

Consumer groups generally supported the proposed rule, but suggested that the agency should adopt further requirements. Advocates, Consumers Union, and Public Citizen wanted more stringent injury criteria limits than those proposed (e.g., HIC of 800), and recommended extending the oblique pole test to rear seating positions.

Comments were also received on the types of vehicles that should be excluded from the pole test, and on the lead time needed to comply with the proposed oblique pole test and with the changes to the MDB test. Nissan submitted test data [30] of one small vehicle and two mid-size vehicles tested according to the proposed test procedures for the oblique pole test and MDB test. The commenter said that the data indicate that curtain air bags may be needed in some vehicles to meet the pole test requirements, and that some vehicles could need a full redesign of the door structure, including the modification or addition of air bags, to meet the MDB test requirements. Nissan requested that the MDB test requirements be phased-in along the same schedule that would be implemented for the pole test, and that both phase-ins be over a 4-year rather than 3-year period.

Comments were also received on NHTSA's Preliminary Economic Assessment (PEA), which analyzed the costs and benefits and other impacts of the proposed rule. Maserati and Ferrari believed that NHTSA underestimated their costs to comply with the proposed rule. The Alliance believed that: In estimating benefits, we should have identified as the target population all potentially injured occupants of relatively modern vehicles for whom the countermeasures are designed; that the proposed changes to the MDB test should have a benefits estimate; that we did not demonstrate the practicability of meeting the proposed test requirements, in that ''no one single vehicle has been subjected to the entire suite of proposed crash tests''; and that the principles set forth in the Data Quality Act were not met (the commenter believed that some of the data in the PEA had errors and that the PEA contained some unsupported assumptions). The Specialty Equipment Market Association (SEMA) stated that ''aftermarket equipment manufacturers and other entities that diagnose, service, repair and upgrade motor vehicles'' may be affected by the final rule if their installed products interact with equipment or systems used by vehicle manufacturers to meet the FMVSS No. 214 requirements.

In October 2006, to estimate the costs and benefits of the final rule, NHTSA sent letters asking vehicle manufacturers to submit voluntarily information on the installation of side air bags in present and future vehicles. Information was received from seven manufacturers, whose information related to about 90 percent of light vehicle sales.

VI. Response to the Comments

a. Critical Decisions

We made several critical decisions in our analysis of the comments. These decisions were critical in defining the safety problem, the test dummies that should be used to address the safety problem, and the crash tests that should be used to evaluate measures to ameliorate the safety problem. Specifically, these decisions pertained to:

Which test dummy should be used to represent the mid-size male;

Whether the standard should limit more than HIC; and

Whether FMVSS No. 214 should use a small female dummy in the pole and MDB tests.

These decisions are discussed in this section.

1. 50th Percentile Male Dummy

The Alliance, AIAM, IIHS, Honda, Maserati, Ferrari, Advocates, and Autoliv commented on the proposal to use the ES–2re test dummy to represent the mid-size male occupant. Generally, the vehicle manufacturers opposed the ES–2re, preferring instead the WorldSID. In its petition for rulemaking, the Alliance asked NHTSA to consider adopting the WorldSID into Part 572 and using the dummy in the phase-in of the pole test requirements.[31] The Alliance stated that WorldSlD would further enhance occupant protection and the international harmonization of safety standards.

However, other commenters acknowledged that WorldSID is not yet ready for use in a safety standard. IIHS said that while WorldSID might be more biofidelic than any other existing dummy, ''developmental testing is not complete on the new, state-of-the art dummy, and therefore the time is not ripe for its inclusion in rulemaking.'' IIHS did not believe that WorldSID was necessary in order for the agency to increase the requirements for protection of the midsize male in side impacts. In this interim period while the WorldSID continues to be evaluated, IIHS supported the ES–2re over the SID and SID–H3 dummies because of the improved biofidelity of the ES–2re and the more sensitive information the ES–2re can provide on rib deflection characteristics and pelvic loading. Autoliv also supported the ES–2re's replacing the SID–H3 dummy, based on the improved biofidelity of the proposed dummy and the tendency toward closer harmonization with other global test requirements. ''Using the same test dummy globally would allow manufacturers to focus on optimizing the air bag design to the performance requirements of the more biofidelic dummy.''

A. We Are Denying the Alliance's WorldSID Petition

We are denying the Alliance's petition for rulemaking because the WorldSID is not ready for use in Federal regulations, nor has it been established that it has achieved a completed design allowing a full assessment of the dummy's potential use in FMVSS No. 214. The WorldSID committee has been modifying the dummy's design, including modifications to the dummy's ribs (June/July 2006), to address durability and other problems that NHTSA found during the agency's evaluation of the dummy.

NHTSA has been working with the WorldSID committee to evaluate the functionality of the dummy as a potential research and compliance test device. We undertook a three-phase program to evaluate the dummy's repeatability, durability and usefulness. The program consisted of: (a) Laboratory-based anthropometry, mass, instrumentation and extensive subsystem evaluations; (b) sled tests; and (c) vehicle crash tests. During phase (a) of the program (the subsystem evaluation), we observed cracking of rib damping material, which led to several modifications of the rib design by the WorldSID committee. The committee sent the revised ribs to NHTSA in August 2006 for evaluation in the agency test program. During evaluation of the rib modifications, concerns over the pelvis design arose when it was observed that the pelvis wing contacted on onboard data acquisition component mounted below the lumbar spine. The agency and the WorldSID committee are presently evaluating modifications to the pelvis design to eliminate this problem.

Once the pelvis modifications can be evaluated and the internal contact issue has been resolved, NHTSA will resume

[30] Submitted under a request for confidential treatment.

[31] *http://dmses.dot.gov/docimages/pdf91/325474_web.pdf*

evaluation of the modifications to the ribs. However, because we cannot know at this point what the outcome of the evaluation will be and because we will not know the outcome for a considerable period of time, we are denying the Alliance's petition. If the evaluation indicates that the WorldSID design is complete, the agency will then consider whether rulemaking should be undertaken [32] to possibly incorporate use of the dummy as a test device during the phase-in period of the requirements adopted today. In the meantime, advancements in occupant protection can be achieved today by upgrading the side impact dummy used in FMVSS No. 214 to the ES–2re, without waiting for a future test dummy.

B. The Side Impact Dummy Should Be Upgraded Now to the ES–2re Without Further Delay

The technology of the ES–2re represents a significant advance over the SID dummy. The ES–2re has enhanced injury assessment capabilities compared to devices existing today, which allows for a fuller assessment of the types and magnitudes of the injuries occurring in side impacts and of the efficacy of countermeasures in improving occupant protection. The ES–2re dummy has provisions for instrumentation that can assess the potential for head injury (it measures the resultant head acceleration, which is used to calculate the Head Injury Criterion (HIC)) and thoracic injuries in terms of rib deflections and spine and rib accelerations. Chest deflection has been shown to be the best predictor of thoracic injuries in low-speed side impact crashes. It is a better injury risk measure than TTI(d) (a chest acceleration-based criterion measured by SID). The ES–2re can also assess the risk of abdominal injuries through three load cells to assess the magnitude of lateral and oblique forces, and the risk of pubic symphysis injuries by way of load cell measurements, as well as pelvis acceleration.

The more advanced test dummy makes possible a more complete assessment of vehicle performance in side impacts, which, together with appropriate injury assessment criteria, will lead to greatly enhanced side impact protection for occupants. In an MDB test described in the May 2004 NPRM (69 FR at 28010), the ES–2re detected a high abdominal force in the Chevrolet Impala at the dummy's abdominal area that was caused by an intruding armrest. Because the SID does not measure abdominal force, this potential injury risk will be newly detected by the ES–2re. Accordingly, this final rule adopts the ES–2re for the pole test and for testing the front seat of vehicles in FMVSS No. 214's MDB test.

C. The ES–2re Is an Improvement Over the ES–2

The Alliance supported the ES–2 as a temporary alternative test device, pending the availability of WorldSID. The Alliance supported the ES–2 because the dummy is already implemented in both EuroNCAP and the UN ECE-regulation 95.02 Supplement 1, i.e., ''at least the ES–2 is harmonized with Europe and already in widespread use.'' The Alliance stated that OSRP gave the ES–2 a biofidelity rating of 4.6 and the ES–2re an overall rating of 4.3 using the ISO-based ranking. (In the ISO ranking system, a dummy with a higher value is considered more biofidelic than one with a lower value.)

The ES–2re is more appropriate for use in FMVSS No. 214 than the ES–2 dummy. As explained in the May 2004 NPRM and in the rulemaking incorporating the ES–2re into 49 CFR part 572,[33] the ES–2 dummy has a deficiency that limits its usefulness in FMVSS No. 214. The agency determined that, in a number of vehicle crash tests, the back plate of the ES–2's upper torso grabbed into the seat back of the vehicle, which lowered the rib deflections measured by the dummy. (''Design, Development, and Evaluation of the ES–2re Side Crash Test Dummy,'' May 2004, NHTSA Docket No. 17694–11.)

This ''back plate grabbing'' problem has long existed in the ES–2 line of dummies. Although efforts were undertaken to address the problem in dummies preceding the ES–2, the back plate grabbing problem has continued with the ES–2. Back plate grabbing has been seen within the ES–2 in the non-governmental European New Car Assessment Program (EuroNCAP) on side impact. EuroNCAP accounts for the problem by adjusting downward the consumer rating scores of vehicles when back plate grabbing is deemed to have occurred.

The ES–2re has rib extensions that solve the back plate grabbing problem of the ES–2. The rib extensions provide a continuous loading surface that nearly encircles the thorax and encloses the posterior gap of the ES–2 ribcage that was responsible for the ''grabbing'' effects. Test data show that the rib extensions reduced the back plate grabbing force to insignificant amounts in vehicle side impact tests that had previously yielded large back plate loads with the ES–2. The rib extensions did not affect rib deflection responses in tests of vehicles that had not originally yielded high back plate loads.

The biofidelity, repeatability, reproducibility, and other aspects of the ES–2re are discussed at length in the agency's December 14, 2006 final rule adopting the ES–2re into 49 CFR part 572 (see Docket 25441). With regard to Toyota's and the Alliance's comment [34] that the rib extensions reduced the ISO-based biofidelity assessment of the ES–2 from 4.6 to 4.3, or from ''fair'' to ''marginal,'' we conclude that the reduced ISO rating is an acceptable outcome of having the rib extensions. The back plate loading problem of the ES–2 renders the ES–2 non-lifelike. If the rib extensions reduce slightly the ISO biofidelity rating but enables NHTSA to use a dummy that has the measurement capabilities of the ES–2 and no back plate loading problem, we conclude that the lower rating is acceptable. We note that the ISO rating represents an improvement over the SID, which received a rating of 2.3 (Byrnes, *et al.*, ''ES–2 Dummy Biomechanical Responses,'' 2002, Stapp Car Crash Journal, Vol. 46, #2002–22–0014, p. 353). The ES–2re biofidelity rating also compares favorably to that of the SID–H3, which received an overall rating of 3.8. Both the SID and SID–H3 have performed well in driving the installation of life-saving countermeasures that have substantially improved the safety of occupants in side impacts.[35]

In short, we cannot accept the ES–2 test dummy because of the back plate loading problem. With the rib extensions of the ES–2re, the back plate loading problem is solved. The ES–2re will enhance levels of side impact protection provided by FMVSS No. 214. The enhancements will be seen in vehicles produced in the near term, regardless of the future assessment of WorldSID.

[32] The suitability of WorldSID for use in FMVSS No. 214 and as a part 572 test device would ultimately be determined through notice-and-comment rulemaking, in accordance with statutory criteria.

[33] NPRM at 69 FR 55550, September 15, 2004, Docket 18864; final rule at 71 FR 75304, December 14, 2006, Docket 25441.

[34] The commenters neither provided reference to a published report nor provided supporting data related to the claim that the overall ISO score for the ES–2re is 4.3. The absence of foundation for the comment limits our ability to respond.

[35] The ES–2re also has improved injury assessment capability compared to the SID and SID–H3 mid-size male dummies. The ES–2re dummy will enhance the protection afforded by vehicles to the affecting population, especially those represented by a 50th percentile male dummy. Thus, this final rule adopts the ES–2re and not the SID or the SID–H3 dummies.

D. The ES–2re Should Measure More Than HIC

The Alliance suggested that the mid-size male dummy in the upgraded requirements of FMVSS No. 214 should measure only HIC. While supporting the ES–2 over the ES–2re, the Alliance stated that both test dummies have design features that affect the dummies' thoracic responses and the resulting rib deflection measurements. According to the commenter, the ''limited stroke piston/cylinder mechanism'' of the dummies can bind in a lateral impact, and the ''binding potential is further compounded as the lateral impact becomes more oblique.''

The Alliance also stated that both the ES–2 and ES–2re dummies incorporate a shoulder design that makes the kinematics of the dummy unlike that of a cadaver. The commenter stated that the human shoulder compresses inward and moves slightly rearward in impacts from the front or side, while the dummies' shoulders are designed to rotate forward, preventing the arm from interacting with intruding structures. The Alliance stated, ''In full-scale vehicle tests, the WorldSID shoulder deflects laterally inward replicating a more human like response.''

Additionally, the Alliance believed that the ES–2 and ES–2re dummies—

> are too narrow through the abdomen and pelvis and do not represent the anthropometry of either the U.S. or world populations. Also, in full-scale tests conducted by the OSRP, the ES–2 measured abdominal forces below the Injury Assessment Reference Values (IARV), while the WorldSID measured abdominal deflections above the IARV. This indicates that the ES–2 abdominal region is too narrow to properly interact with intruding vehicle structures and is inadequately instrumented, causing it to erroneously miss a potential risk of abdominal injury. The WorldSID can better assess the risk of abdominal injury because its anthropometry better matches that of the human population and it is equipped to measure abdominal deflection.

Because the Alliance believed there are deficiencies with the ES–2, the commenter said that NHTSA should just require manufacturers to meet a head protection criterion, and not criteria assessing injury to the thorax, abdomen or pelvis.

We are denying this request. Our analysis of the thoracic response of the ES–2re demonstrated that the dummy's thoracic responses provided valid data. We analyzed crash data from oblique and perpendicular pole tests of two vehicles: A 1999 Maxima and a 2001 Saturn. The vehicles were not equipped with side air bag systems. The rib deflections of the ES–2re in the driver's seating position were almost identical in the oblique and perpendicular pole tests. The rib deflections of the dummies were consistent in time and were of similar magnitude. There was no indication of flat-topping, binding or distortion of the deflection signal due to oblique loading. In addition, T1 driver lateral acceleration was consistent and did not show differences between oblique and perpendicular impacts. (See ''Lateral vs. Oblique Impacts of the ES–2 Dummy in Pole and MDB Tests,'' April 2006, a copy of which is in Docket 25441).

Both the lower spine accelerations (T12) and the summed abdominal forces for the driver ES–2re were higher in the oblique pole test configuration. However, the oblique pole test was run at a higher impact speed than the perpendicular test (20 mph versus 18 mph), which likely increased the measurements. Also, in the oblique pole test, the lower part of the dummy torso appears to be loaded earlier in the crash event than in a perpendicular test, which indicates that the T12 and abdominal forces could be higher because initial loading is more through the lower part of the torso.

We also analyzed the measurements of the ES–2re in FMVSS No. 214 MDB tests of a 2001 Ford Focus, 2002 Chevolet Impala equipped with a combo head/thorax side air bag for the driver, and a 2004 Honda Accord equipped with a thorax bag. Overall, the driver rib deflections were higher than the deflections for the rear passenger dummy. However, a different loading environment caused the lower rib deflections for the ES–2re in the rear seat as compared to the driver. Rib deflections showed a slow rise, and the peaks occurred about 10 milliseconds later than those of the driver dummy. The loading duration was also considerably longer. The passenger rib deflections were consistently lower towards the bottom of the ribcage. *Id.*

For the Focus, the driver and passenger T12 accelerations were comparable. For the Impala and Accord, the rear passenger T12 acceleration was larger than that of the driver dummy. This difference could be attributed to the fact that both the Impala and Accord had a thorax side air bag for the driver position and none for the rear passenger position.

The data from the tests did not show a sensitivity to oblique loading in the dummy's abdomen. The passenger abdominal force for the Impala was very large compared to the driver abdominal force, but this was due primarily to large structural intrusions (the test film shows the arm rest intruding into the dummy in the MDB test). This indicates a localized loading through the abdomen for the Impala passenger (resulting in an off-loading condition for the chest and, thus, much lower rib deflection measurements as compared to the driver dummy). For the Accord, the passenger abdominal force was larger than the driver abdominal force, but the difference could be attributed to the side air bag in the driver position.

The Alliance contended that the ES–2re's shoulder has a biomechanical flaw in that the shoulder moves forward relative to the rest of the dummy, while, according to the commenter, the WorldSID dummy's shoulder moves rearward. The Alliance believes that a rearward motion is consistent with that exhibited by post mortem human subjects (PMHS) in rigid impactor tests. The commenter did not demonstrate the relevance to this rulemaking of movement of the dummy's shoulder frontward or rearward. Use of the dummy in vehicle crash tests has indicated no detrimental effects due to shoulder design, such as rib flat-topping or distortion of signals, showing that the shoulder has reached its limit for range of motion or has otherwise performed unacceptably due to a forward motion of the clavicles.

In conclusion, the data show that there are no deficiencies with the ES–2re that justify limiting its injury assessment to that of HIC only. The data show that there is virtually no effect due to oblique loading in the driver ES–2re deflection readings in oblique pole tests as compared to perpendicular pole impacts. The data also do not demonstrate an indication of sensitivity to oblique loading in MDB tests. To the contrary, the test data from the Impala test show that the abdominal response of the ES–2re in the rear passenger position in the MDB test detected critical loading by intruding vehicle structures at the lower torso level. Further discussion of the agency's response to comments about the biofidelity of the ES–2re can be found in the December 14, 2006 49 CFR Part 572 final rule on the ES–2re (see Docket 25441).

Anthropomorphic test devices are constantly evolving and advancing due in part to worldwide research efforts toward improving the biofidelity, durability and injury-measurement capabilities of the test devices. Adopting the ES–2re and the injury assessment reference values associated with the risk of injury to an occupant's thorax, abdomen and pelvis will enhance the safety of occupants in side impacts. In a NASS study of side impact crashes, it was estimated that between 8.5 percent

and 21.8 percent of all AIS 3+ injuries are to the abdomen of restrained near side front seat occupants.[36] The important gains in occupant protection that can be achieved by the ES–2re should not be delayed or lost on the grounds that a more advanced test dummy may be available in the future.

2. The 5th Percentile Female Dummy

A. The 5th Percentile Adult Female Dummy Is an Integral Part of This Upgrade

The Alliance suggested that NHTSA should incorporate only a 50th percentile male test dummy in both the pole and MDB tests and completely forego use of the 5th percentile female dummy in the final rule. The commenter believed that the agency did not provide data showing that real-world safety will be improved by use of the 5th percentile dummy ''beyond the benefits provided by the industry's front-to-side voluntary commitment and the IIHS side impact rating test.''

i. Need for the 5th Percentile Dummy in the Pole Test

According to the Alliance, crash data[37] demonstrate that narrow object side impacts are ''far more likely to involve 50th percentile-male-sized occupants than 5th percentile-female-sized occupants.''[38] According to the Alliance, only 4.7 percent of nearside front outboard occupant crashes involved a tree or pole impact, and only 0.28 percent of nearside front outboard occupant crashes with trees or poles involved occupants with a height of 47 to 61 inches. Therefore, the Alliance argued, only the 50th percentile adult male dummy is needed in the pole test.

We have considered the Alliance's reasoning but conclude that: (a) Tree/pole impacts comprise a significant safety problem (b) involving smaller occupants.

Tree/Pole Impacts

We disagree with several of the Alliance's claims. The first concerns the magnitude of the side impact safety problem posed by tree or pole impacts. The commenter believes that 4.7 percent of nearside front outboard occupant crashes involved a tree of pole impact. That determination was based on the commenter's analysis of all side crashes occurring in 1990–2002 that resulted in *any* injury, from minor (AIS 1) to fatal.[39] Because there are many more AIS 1 and 2 injuries in the accident database than AIS 3+ injuries, we believe that including AIS 1 and 2 injuries in the analysis masks the frequency of tree or pole impacts in crashes causing serious (AIS 3+) injuries and underestimates the harm addressed by this rulemaking. As discussed below and in the NPRM , an analysis that is focused on side crashes[40] resulting in a fatal injury shows that 21 percent of these crashes involved side impacts with rigid narrow objects.

As discussed in the NPRM, NHTSA analyzed fatalities in the 1991, 1995, and 1999 FARS files using non-rollover, near-side impact data. We have now also updated the analysis for 2004 FARS.[41] The fatalities occurred in the front and rear seats of light vehicles in side impacts with various objects. The percentage of vehicle-to-rigid narrow object impacts has remained stable at approximately 23 percent of the total number of fatal side impact crashes. The percentage of collisions with LTVs has increased, while the percentage of collisions with passenger cars has decreased over time. The results of the analysis are presented below in Table 10:

TABLE 10.—OCCUPANT FATALITY DISTRIBUTION

[Non-rollover near-side impacts]

	Collisions with passenger cars (percent)	Collisions with LTVs (percent)	Collisions with rigid narrow objects (percent)	Collisions with other vehicles/ objects (percent)
FARS 1991 MY 1987 and Later Light Vehicles	28.9	27.1	20.1	24.0
FARS 1995 MY 1991 and Later Light Vehicles	24.8	33.0	21.2	21.0
FARS 1999 MY 1995 and Later Light Vehicles	20.5	36.3	21.0	22.2
FARS 2004 MY 2000 and Later Light Vehicles	15.4	38.5	23.2	22.9

Given the number of tree or pole side crashes that occur, the analysis shows that tree or pole side impacts are over-represented in terms of fatally injured occupants.

Small Stature Occupants Are Seriously Injured in Tree/Pole Impacts

The second aspect of the Alliance's reasoning with which we disagree concerns the involvement of small stature occupants in tree or pole side crashes. The commenter believes that only 0.28 percent of nearside front outboard occupant crashes with trees or poles involved occupants with a height of 47 to 61 inches, and so the 5th percentile female dummy is not needed in the pole test.

We analyzed accident data on drivers involved in side impacts to examine characteristics of drivers seriously injured or killed in tree or pole impacts. We found in analyzing 1990–2001 National Automotive Sampling System Crashworthiness Data System (NASS CDS)[42] crash data that smaller stature drivers (height up to 5 feet 4 inches) comprise approximately 28 percent of seriously or fatally injured drivers in narrow object side impacts. The 1990–2001 NASS CDS data also indicate that there are differences in the body region distribution of serious injuries between small and medium stature occupants that are seriously injured in these side

[36] Samaha, R.S., Elliot, D., ''NHTSA Side Impact Research: Motivation for Upgraded Test Procedures,'' *supra.*

[37] The commenter performed an analysis of 1990–2002 NASS CDS side crashes with a lateral delta-V range of 12–25 mph, involving model years of 1990 or newer vehicles in non-rollover side impacts (nearside front-outboard occupants of age 12 years or older with a fatality or known MAIS, and no total ejections).

[38] The Alliance believed that the 5th percentile adult female dummy represented occupants only of heights of 47 to 61 inches.

[39] Lateral delta-V range of 12–25 mph, model years of 1990 or newer vehicles, non-rollover side impacts, nearside front-outboard occupants of age 12 years or older.

[40] 2001 FARS nearside non-rollover fatalities, model year 1995 and newer vehicles struck vehicle.

[41] The slight differences in distributions in Table 10 of this preamble and those of Table 1 of the NPRM (69 FR at 27993) are due to new runs of the data and minor differences in the definition of ''other'' vehicle types.

[42] NASS CDS has detailed data on a representative, random sample of thousands of minor, serious, and fatal crashes. Field research teams located at Primary Sampling Units across the country study about 5,000 crashes a year involving passenger cars, light trucks, vans, and utility vehicles.

collisions. The data suggest that smaller stature occupants have a higher proportion of head, abdominal and pelvic injuries than medium stature occupants, and a lesser proportion of chest injuries. (''NHTSA Side Impact Research: Motivation for Upgraded Test Procedures,'' Samaha, *et al.* (2003).)

The appropriateness of an anthropomorphic test device for a dynamic test depends in part on its ability to represent occupants involved or injured in the crash simulated by the dynamic test. There are only two side impact dummies existing today representing the sizes of occupants seriously injured in side impacts: the SID–IIs and the mid-size adult male dummies (e.g., the ES–2re). The height of a smaller stature (5th percentile) adult female is 59 inches (4 feet 11 inches). The height of a mid-size adult male is about 69 inches (5 feet 9 inches). The mid-point between the two is 64 inches (5 feet 4 inches). Drivers less than 64 inches in height are usually female and/or elderly, and are closer in physiology to a 5th percentile female than to a 50th percentile male. (Drivers taller than 64 inches could also be represented by the SID–IIs since driver height falls along a continuum. However, for purposes of our analysis of the impacts of this rulemaking, we had to make a cut-off and did so at 64 inches.) Accordingly, we have determined that the SID–IIs, with its height of 59 inches (4 feet 11 inches), is representative of occupants of heights up to 64 inches (5 feet 4 inches). The assumption that a 5th percentile adult female dummy is representative of occupants of heights up to 64 inches (5 feet 4 inches) is consistent with the approach taken by the agency in analyzing the impacts of advanced air bags under FMVSS No. 208, ''Occupant crash protection.''

The Alliance recommended that NHTSA assume that the SID–IIs only represented occupants with a height of 47 (3 feet 11 inches) to 61 (5 feet 1 inch) inches. We believe this assumption is overly restrictive. Sixty-two-, 63- and 64-inch tall adults, mostly women, are more similar in build to the SID–IIs than to the 50th percentile male dummy.

As explained in the next section, including the 5th percentile female dummy in the oblique pole test will gain real world benefits beyond those attained using just a mid-size adult male dummy in the pole test. We estimate that the inclusion of the SID–IIs in the oblique pole test will save an additional 78 lives beyond the fatalities saved by changes to vehicle designs to meet an oblique pole test using the 50th percentile male dummy alone. These lives lost annually of smaller stature occupants, many of whom are elderly, constitutes a safety problem that incorporation of the SID–IIs will address.

Current Side Air Bags Will Be Made Even Better To Enhance Protection to Smaller Stature Drivers

Current combination head/thorax air bags and side curtains generally perform well in the IIHS consumer information program side impact tests. They will do even better under our regulation.

The Alliance believed that we should not be concerned that some side air bag systems we tested did not meet the IARVs with the SID–IIs. The commenter believed that ''current side air bag systems are proving to be very effective in real-world side impacts * * * [and] that the agency's concerns are unfounded and unwarranted regarding current side airbag designs failing to activate properly or providing sufficient coverage in real-world crash situations.''

The primary impact of this regulation on motor vehicle safety will be to ensure that head protection is provided in passenger vehicles, and to improve on the protection of current bags. In our 214 fleet testing program, current side air bags did not always meet the proposed criteria when tested with the SID–IIs dummy. In the agency's tests of 10 vehicles, seven exceeded the injury criteria for the 5th percentile female dummy in the oblique pole test (four exceeded HIC, four exceeded the lower spine, and seven exceeded the pelvic force criteria). In the Ford Five Hundred and Saturn Ion tests, we observed that the side air bags deployed after the 5th percentile female dummy had already moved toward the very front of the air bag at pole contact and had hit a portion of the air curtain/tether interface that was not inflated to cushion the impact, which resulted in HIC readings of 1,173 (Ford Five Hundred) and 5,203 (Saturn Ion). In the Ford Expedition test, we observed that the SID–IIs rotated around the curtain and contacted a portion of the air curtain/tether interface that was not inflated to cushion the impact, which resulted in an HIC value of 5,661.

If the ES–2re were the only test dummy used in the pole test, countermeasures installed for the ES–2re might not protect the population (shorter and/or elderly drivers) represented by the 5th percentile female dummy. In the four air bag curtain tests discussed above, the HIC values for the ES–2re were moderate to low. The 5th percentile female dummy's head is positioned lower than that of the ES–2re because of sitting height differences between the two dummies. The SID–IIs is also farther forward than the ES–2re adult male dummy, which leads to differences in the interplay between the dummy and the vehicle side structure, roof and side air bag system. The differences in size and sitting position between the two dummies affects more than HIC responses. In the agency's oblique pole test of the Volkwagen Jetta, the pelvic force reading of the SID–IIs was 7,876 N, while the vehicle met all the IARVs for the 50th percentile male dummy.

Air bag sensors could also be improved. As discussed in the NPRM (69 FR at 27998), the side air bags in two vehicles that were certified as meeting the requirements of a perpendicular crash test (the FMVSS No. 201 90-degree pole test) did not deploy when tested with the 5th percentile female dummy in the oblique pole test. We do not consider this to be a matter of a test artifact or other anomaly of the laboratory test conditions. We conclude that the oblique localized loading in the pole test (from the two distinct narrow impact locations corresponding to the seating positions of both sizes of test dummies) will induce more robust crash sensors that will lead to further protection in the field.

ii. Need for the 5th Percentile Dummy in the MDB Test

The Alliance believed that crash data demonstrate that occupants with heights less than 65 inches are involved in vehicle-to-vehicle side impacts with a ''significant frequency,'' i.e., that adult male and adult females are similarly represented in vehicle-to-vehicle crashes in the delta-V range of 12–25 mph, in which a front, outboard struck-side occupant receives a serious-to-fatal injury. The commenter also determined that vehicle-to-vehicle side impacts are significantly more frequent compared to tree/pole side impacts. However, the commenter believed that ''[T]he industry's voluntary agreement already includes requirements for an MDB test using a 5th percentile female dummy; we believe NHTSA has not demonstrated the need to overlay this agreement with a 5th percentile female MDB regulatory test requirement.''

Ferrari stated that we did not clearly identify the expected benefits from the use of the dummy in the MDB test. Ferrari further stated that, even if the population represented by the 5th percentile female dummy were at a greater risk of head and abdominal injuries, the SID–IIs dummy would not provide any increased benefit to this population because the dummy ''does not have any feature able to measure abdominal injuries, and the risk of

injuries to the head is much better assessed by the pole impact test (not the MDB test). The introduction of the SID–2s [sic], lacking even a chest deflection criterion, would not supplement in any way the protection provided by the introduction of the ES–2 or ES–2re.''

Agency response: Based on our evaluation of available data, we have decided to require only one MDB test (per side of the vehicle). The MDB test specifies use of an ES–2re (50th percentile adult male) dummy in the front seating position and a SID–IIs (5th percentile adult female) dummy in the rear.

The NPRM proposed to use the ES–2re dummy in both the front and rear outboard seating positions on both sides of the vehicle, and also proposed use of the SID–IIs dummy in the front and rear outboard seating positions on both sides of the vehicle. We issued the proposal based in part on crash data indicating that 35 percent of all serious and fatal injuries to nearside occupants occurred to occupants 5 feet 4 inches (or 163 centimeters) or less, which are best represented by the 5th percentile female dummy (69 FR at 27991). We also considered the results of two MDB tests with the SID–IIsFRG dummy that had indicated a need for the dummy. In a test of a 2001 Ford Focus, the pelvic force was exceeded for the driver dummy (5,621 N). In a test of a 2002 Chevrolet Impala, the left rear dummy's lower spine acceleration and pelvic force criteria were exceeded (89 g and 5,711 N, respectively). Based on those results, we expected that improvements to the arm rest area and other structural components would be required to improve protection for the 5th percentile occupants (69 FR at 28011).

Since the NPRM, we have conducted eight MDB tests with the SID–IIs dummy in predominantly model year 2005 vehicles. Our crash test results have shown that vehicles newer than the 2001 Focus and the 2002 Impala are generally able to meet the proposed injury criteria when tested with this dummy. (The 2001 Focus has since undergone a mid-cycle design change with head/torso combo bags becoming optional for model year 2005 vehicles. The 2002 Impala has since been redesigned with model year 2006 vehicles having curtain and thorax bags as standard equipment.)

MDB Test of the Front Seat

For the driver dummy, 7 of 8 vehicles met the criteria. The one exception for the front seat was the 2005 Saturn Ion, which resulted in the SID–IIs driver dummy exceeding the pelvic force criterion (8,993 N).

The Saturn Ion in the test was equipped with an air curtain, but lacked a thorax-mounted side air bag. The lack of thoracic air bag protection may have led to the high pelvic force measured by the dummy. In our pole testing, the Saturn Ion exceeded the limits on HIC (5,203), lower spine acceleration (110 g) and pelvic force (5,755 N). It also scored ''poor'' in the IIHS side impact crashworthiness evaluation. Based on this complete array of testing with this vehicle, we believe that needed improvements to comply with the oblique pole tests of this final rule will likely address the one SID–IIs driver dummy failure that the agency observed in its MDB test.

Thus, based on the available data that show:

(a) All vehicles except the Ion meeting the MDB test when tested with the SID–IIs in the front seat; and

(b) Countermeasures to address the Ion's failing the pelvic criterion in the front seat of the pole test when tested with the SID–IIs could address the failure of the vehicle to meet the pelvic criterion in the MDB front seat test—

The agency has decided not to adopt an MDB test with the SID–IIs in the front seating positions.

The benefits from an MDB test with the SID–IIs in the front seat will likely be absorbed by the SID–IIs front seat oblique pole test requirements, as suggested by some of the commenters. That is, a countermeasure such as a thorax air bag in the front seat of the Ion installed to meet the pole test requirements could also enable the Ion to meet the pelvic criterion of the MDB rest. Thus, the MDB test of the front seat with the SID–IIs dummy is unlikely to lead to improved occupant protection, and is not warranted for adoption into FMVSS No. 214.

(On the other hand, adoption of the ES–2re dummy in the MDB tests to test the front seat of vehicles is warranted. The reasons for adopting the ES–2re in the front seat of this test are explained in section VI.c of this preamble.)

MDB Test of the Rear Seat

The test of the rear seat with the SID–IIs resulted in high pelvic forces in the Honda Accord and in the Suzuki Forenza. We were concerned about these results because rear seat occupants are predominantly made up of smaller stature occupants, e.g., children, who more closely resemble the anthropometry of the SID–IIs than a 50th percentile adult male. All vehicles met all the criteria proposed in the NPRM when tested with the ES–2re 50th percentile male dummy.

In addition, we observed that in the tests of the VW Jetta, Saturn Ion, Ford Five Hundred, and Honda Accord, and the Suzuki Forenza,[43] the SID–IIs dummy in the rear seat of the MDB test had elevated thoracic and/or abdominal rib deflections that were not observed with the rear seat ES–2re dummy. We felt that the rib deflections of the SID–IIs were noteworthy, since many experts consider deflection to be the best predictor of thoracic injury.[44] We believed that the SID–IIs's elevated rib deflections in the rear seat indicated that side impact crashworthiness designs in the rear were possibly in need of improvement to better protect rear seat occupants, particularly children and other smaller stature occupants.

Incorporation of the SID–IIs into the rear seat MDB test enables us to monitor readily the rib deflections measured in the test[45] to assess how the rear seat environment is protecting children and small occupants. While the agency did not propose thoracic and abdominal rib deflection requirements for the 5th percentile female dummy and thus is not adopting rib deflection limits in this final rule, we are considering a future rulemaking to adopt limits on the thoracic and abdominal rib deflections measured by the SID–IIs in the FMVSS No. 214 MDB and pole tests. The rulemaking could be a part of a rulemaking to incorporate WorldSID into FMVSS No. 214, if such a rulemaking were to ensue, or it could be developed on its own.

Incorporation of the SID–IIs into FMVSS No. 214's MDB test of the rear seat enhances protection of rear seat occupants also because the 5th percentile adult female dummy better represents the anthropometry of rear seat occupants than the SID or the ES–2re (50th percentile male dummies). The average seated height of rear-outboard occupants is approximately 81.6 centimeters (cm).[46] The sitting

[43] The Forenza was not tested with the ES–2re dummy.

[44] Kuppa, S., Eppinger, R., McKoy, F., Nguyen, T., Yoganandan, N., Pintar, F., ''Development of Side Impact Thoracic Injury Criteria and their Application to the Modified ES–2 Dummy with Rib Extensions (ES–2re),'' Stapp Car Crash Journal, Vol. 47 October 2003, The Stapp Association. A paper demonstrating that deflections are the best predictors of injury in frontal impacts is by Kent *et al.* (Kent, R., Crandall, J., Bolton, J., Prasad, P., Nusholtz, G., Mertz, H., ''The Influence of Superficial Soft Tissues and Restraint Condition on Thoracic Skeletal Injury Prediction,'' Stapp Car Crash Journal, Vol. 45, November 2003, The Stapp Association.)

[45] We will also monitor the SID–IIs rib deflections in the oblique pole test.

[46] A ratio of sitting height to standing height, developed by the University of Michigan

Continued

height of the SID–IIs is approximately 78.8 cm, while that of the ES–2re is 88.4 cm. The SID–IIs is closer in height to the average outboard rear seat occupant than the SID or the ES–2re. The SID–IIs's ability to assess the risk of head injury through the measurement of HIC will better ensure that head protection is provided to children and smaller stature adults in rear seating positions than through use of the 50th percentile adult male test dummies.

Safety will also be enhanced by this final rule using the SID–IIs in the rear seat since this smaller sized dummy will fit in more vehicles, and therefore exclude few vehicles that cannot accommodate the 50th percentile male dummy. (Currently, S3(b) of FMVSS No. 214 excludes the rear seat in passenger cars that have rear seating areas that are so small that the 50th percentile adult male test dummy cannot be accommodated according to the positioning procedure specified in the standard.) We believe use of the SID–IIs in the rear will provide the agency with the ability to test more vehicles that have rear seats too small to accommodate the mid-size male dummy. On the other hand, we have decided not to adopt the ES–2re dummy in the rear seat of the MDB tests. Our reasons are explained in section VI.c of this preamble.

iii. Beyond the Voluntary Commitment

Test data demonstrate the benefit of having the SID–IIs in the pole test, notwithstanding the industry's voluntary agreement.[47] In the agency's side impact test program, vehicles that were rated ''Good'' in the IIHS side crashworthiness evaluation when tested with the SID–IIs exceeded one or more of the injury criteria of this rule when tested with the SID–IIs in our pole test program. In the pole test of the Volkwagen Jetta, which IIHS scored ''Good,'' the pelvic force (7,876 N) exceeded the IARV (limit 5,525 N). In the pole test of the Honda Accord, the SID–IIs's pelvic force criterion was over 10,000 N. The industry's voluntary commitment does not commit to reducing these pelvic forces. However, we can ensure improvement as a result of manufacturers' meeting the pole requirements of this final rule.

B. However, Not All of the Proposed FRG Changes Are Needed

The SID–IIs test dummy has been used by Transport Canada in crash tests since the late 1990s and is used by IIHS in its consumer information program for ranking vehicle performance. In its initial evaluation of the dummy, NHTSA had found some durability problems with the dummy's shoulder and ribcage and some chest transducer mechanical failures. To improve the durability of the dummy, NHTSA modified the dummy to incorporate, among other things, floating rib guides to better stabilize the dummy's ribs. (See 69 FR at 70948.)

The durability problem arose in 6.7 meters per second (m/s) sled tests of the SID–IIs Build C dummy using a rigid wall with a 101 mm abdominal offset.[48] Damage in some of the tests included deformed abdominal ribs, bent abdominal potentiometer shafts, and/or gouged damping material, caused by vertical motion of the ribs and/or excessive rib compression. The agency concluded that, under those test circumstances, portions of the abdominal and thorax ribs during their extreme compression were extending beyond the boundaries of existing rib guides, and that under some test conditions, were moving out of their initial plane of translation. Such out of plane translation caused the linear deflection transducer pivots to exceed their angular motion limits, resulting in transducer shaft failures and rib damping material gouging due to interaction between the extended ribs and the rib guides.

NHTSA developed the floating rib guide system to prevent the compressed ribs from leaving the outside perimeter of the rib guides and thereby prevent damage to surrounding areas. Rib guides were used to ''float'' with the ribs as they expanded in the anterior-posterior direction during rib compression. This was intended not only to eliminate the problem of ribs extending outside the boundaries of the rib guides, but also retain the ribs in their initial plane and thereby prevent damage to the transducer shaft. To further prevent damage (bending) of potentiometer shafts and damage to potentiometer housings, the rib stops were reshaped and changed from a flexible urethane material to vinyl-coated aluminum. The maximum lateral rib deflection of the dummy was also reduced from 69 mm to 60 mm to further protect the instrumentation.[49]

While NHTSA tentatively determined there was a need for the FRG modifications, the agency noted in the December 8, 2004 Part 572 NPRM that there were other views as to the need for the FRG changes to the dummy (69 FR at 70954). The NPRM noted that Transport Canada, IIHS and the industry had used the unmodified SID–IIs dummy for several years to their satisfaction.

Comments on the proposed FRG changes: All commenters responding to this issue were opposed to or expressed concern about adopting the FRG modifications to the SID–IIs dummy. Commenters believed that the unmodified Build Level C and/or Build Level D dummies were sufficiently durable for crash tests. In its October 14, 2004 comments on the NPRM, the Alliance stated that the OSRP SID–IIs Upgrade Task Group [50] had agreed to enhancements of the SID–IIs Build C dummy or modifications incorporated into the Build D dummy, but, the Alliance emphasized, OSRP had steadfastly maintained that there was no durability problem requiring the floating rib guide change to the dummy's thorax. The Alliance believed that NHTSA's Vehicle Research and Test Center (VRTC)—

> proposed the addition of floating rib guides to the SID–IIs dummy based on a small series of sled tests, including a single abdominal offset sled test in which the ribs were damaged and exited the original rib guides. The test was performed with an improperly positioned and improperly scaled abdominal plate that simulated a rigid armrest. This setup produced a very severe impact condition for the SID–IIs (AF05) dummy. Instead of being scaled for the AF05, the test was performed with an abdominal plate that was offset 100 mm, which are the test conditions for the ES–2 (AM50) dummy. Further, the 100 mm offset is at the extreme end of the range of armrest width in typical vehicles. In addition, the abdominal plate is rigid and therefore provided a more severe impact surface than do typically padded and deformable vehicle armrests. This test setup

Transportation Research Institute (UMTRI), is approximately 0.54. Applying this ratio to the real world rear seat occupant data, the mean sitting height of occupants in rear outboard seats (excluding those in infant and toddler child restraint systems) is 81.6 cm.

[47] The industry's voluntary commitment is a commitment to meet IIHS's recommended practice of HIC_{15} performance of 779 or less for a SID–IIs crash dummy in the driver's seating position and does not include at this time performance criteria for other body regions, specifically, the thoracic and abdominal regions. The voluntary commitment also does not address the right front or rear seat passenger positions at this time.

[48] The agency conducted the tests to replicate biomechanical sled test impact configurations previously reported by Maltese et al. (''Response Corridors of Human Surrogates in Lateral Impacts,'' Technical Paper 2002–22–0017. Proceedings, 46th Stapp Car Crash Conference, 2002).

[49] The FRG design also encompassed other changes to improve the durability of the dummy. The shoulder rib guide of the dummy was reshaped and deepened beyond the front edge of the shoulder rib to keep the shoulder rib from moving vertically during its compression. The damping material of the shoulder rib assembly was made thinner and spanned the entire width of the steel band.

[50] The Alliance stated in its comment, ''The OSRP SID–IIs Upgrade Task Group is responsible for coordinating, evaluating and approving any design modifications to the SID–IIs dummy, originally designed in 1994–95.''

produced an impact condition for the AF05 dummy more severe than that of full-scale vehicle tests, since the dummy's ribs were damaged in the sled test but no rib damage occurred in the vehicle tests using the SID–IIs Version C.

The Alliance further stated that the agency's concern about the accuracy of the acceleration and deflection measurements of the Build Level C dummy due to the ribs not staying in place ''does not follow logically because it is quite normal to have the ribs deform during impact by expanding in the fore-aft dimension of the chest. The fact that they change shape and do not stay in place has nothing to do with the accuracy of the deflection measurements.''

IIHS also objected to the agency's use of the 6.7 m/s test. IIHS found the FRG version of the SID–IIs ''an unacceptable and unnecessary compromise of the original dummy's biofidelity to address an unproven durability problem'' (March 4, 2005 comment to Docket 18865). IIHS stated:

> Not only have NHTSA's own vehicle crash tests failed to show any durability problems with the original dummy design, but Institute and industry experience confirms the dummy is durable enough for crash testing. As of October 2004 the Institute had conducted 48 side impact tests with the SID–IIs dummies positioned in the driver and rear outboard seating positions, for a total of 96 SID–IIs test exposures. Of these only 6 caused any damage to the dummy; in 4 tests the dummy's shoulder was damaged, and in 2 tests one of the abdominal ribs did not pass post-test verification. Similar trends are found in the Occupant Safety Research Partnership (OSRP) dataset, which includes tests conducted by DaimlerChrysler, General Motors, the Institute, and Transport Canada. Of the 241 SID–IIs test exposures (or 1,446 exposures to the dummies' individual ribs), only 21 tests (8.7 percent) caused any dummy damage; of these only 3 tests (0.3 percent of total rib exposures) exhibited any evidence of ribs catching on the vertical guides.

IIHS recommended that NHTSA adopt the SID–IIs Build Level C or the Build Level D dummy into FMVSS No. 214. IIHS stated (Docket 18865):

> Build Level D would incorporate many of the design upgrades currently in the FRG version that would improve the dummy while maintaining its high biofidelity rating. The changes IIHS supports for build level D include redesign of the shoulder rib and rib guide, neck mounting bracket, rib stops, and spine box. Using either C- or D-level SID–IIs would permit the agency to draw on the dummy's accumulated crash test experience to incorporate rib deflection data among the FMVSS 214 requirements.

Some commenters expressed a view that the SID–IIsFRG dummy was itself not an adequate a test device for incorporation into 49 CFR part 572. The Alliance stated that in full vehicle crash tests, there are significant differences in the shape and magnitude of the chest deflection responses of the SID–IIsFRG and the Build C dummy, with the SID–IIsFRG having ''greatly reduced'' deflections. The Alliance stated that researchers at Transport Canada and elsewhere found ''no flat-topping in the original SID–IIs, but severe flat topping in the SID–IIsFRG.'' Nissan stated that it has observed scratching of the SID–IIsFRG's rib guides created by rib contact and was concerned that this phenomenon could reduce test repeatability using the dummy over time, or may negatively affect the accuracy of the rib data.

Some commenters believed that it was more advantageous to adopt the SID–IIs Build Level C or Build Level D dummy than the SID–IIsFRG. The Alliance stated that the ISO 9790 biofidelity rating of the SID–IIsFRG is only ''fair'' (5.9), while that of the SID–IIs Build C was ''good'' (7.0). IIHS expressed serious concern that the FRG modification ''has considerably degraded'' the SID–IIs dummy's biofidelity. IIHS supported the Build Level C or D dummies in the rulemaking because it would permit the agency to incorporate rib deflection data in test requirements. IIHS stated:

> Without rib deflection limits for tests with the small dummy, the proposed side impact standard will not establish the same minimum levels of protection for vehicle occupants of various sizes. It is disappointing that part of NHTSA's reason for not including SID–IIsFRG rib deflection limits was the need to study the issue further. By favoring the FRG modified dummy the agency is ignoring the accumulated test experience with the original dummy.

Advocates expressed ''misgivings over the lack of chest deflection measurement capability for the 5th percentile SID–IIsFRG female dummy.'' Honda expressed concern that the SID–IIsFRG is not commonly used by automakers today. Honda stated that, ''The use of SID–IIs [Build Level C or D] will expand because it is specified in the [industry's] voluntarily commitment on FMVSS No. 214.'' TRW said that using ''known and accepted'' test dummies could help expedite motor vehicle manufacturers' meeting their ''voluntary commitment'' to install inflatable side head protection systems.

Agency response: After reviewing the comments and other information, we have decided to use the SID–IIs Build Level D test dummy, rather than the FRG dummy, in FMVSS No. 214.[51]

The SID–IIsFRG floating rib guide concept was developed to improve the durability of the SID–IIs dummy under extremely severe impact conditions. We have concluded that data now available to the agency do not support a need for all of the floating rib guide design. The test conditions precipitating the development of the FRG were exceptionally severe and appear to be unlike vehicle crashes to which the crash dummy is exposed.

The OSRP task group and IIHS noted that the type of damage reported by NHTSA in VRTC sled tests was not experienced in their full scale vehicle crash tests. Our own testing bears this out. Since the time of the NPRM, NHTSA has used the SID–IIs (Build D) in over 24 oblique pole and MDB crash tests without seeing structural or functional problems with the dummy. In addition, the agency evaluated four SID–IIs Build D dummies in extensive component, sled, and pole and MDB vehicle crash tests without sustaining functionality and durability problems.

The Build D dummy has many of the enhancements of the SID–IIsFRG and some enhancements similar to FRG features, including new rib stops, larger motion ranges of potentiometers pivots, ½ inch diameter potentiometers, and enhancements to the shoulder structure. The shoulder enhancements address bending deformation of the shoulder rib, delamination and/or gouging damage to the deflection transducer. All of these enhancements have improved the structural integrity of the dummy and have eliminated the need for all of the floating rib guide design changes.

We further believe that there are advantages to adopting the SID–IIs Build D dummy rather than the SID–IIsFRG beyond what is needed for the durability of the dummy. As noted by the commenters, while the FRG was very successful in containing the ribs within the rib guides and in preventing potentiometer-transducer failures, the floating rib guides added mass and additional stiffness to the ribs. As a result, the FRG became less human-like, rib deflections seriously reduced, and the shape of the deflection-time histories changed compared to testing under similar loading conditions without the FRG. *Id.*

[51] A final rule adopting the Build Level D into 49 CFR part 572 was published December 14, 2006, 71 FR 75342, Docket 25442. The part 572 final rule discusses the biofidelity, repeatability, reproducibility, durability, and other aspects of the dummy. The document discusses the agency's decision to adopt some but not the entirety of the floating rib guide design.

IIHS uses the SID–IIs in its side impact consumer information program. IIHS noted in its comments to the NPRM that Build D would incorporate many of the design upgrades currently in the FRG version that would improve the dummy while maintaining the dummy's high biofidelity rating. Transport Canada plans to continue using the SID–IIs in its research program. Using Build D in FMVSS No. 214 means that the same dummy will be used in governmental and non-governmental consumer information and research programs. This consistency will enhance the testing of vehicles by making the test results from NHTSA, Transport Canada, IIHS and industry in many ways more comparable. Using the same test dummy will also more effectively focus research and design efforts on more consistent and effective countermeasures that will most successfully protect smaller stature occupants. Accordingly, this final rule adopts use of the SID–IIs test dummy into the compliance tests of FMVSS No. 214.

b. Aspects of the Pole Test Procedure

In the NPRM, the agency proposed a dynamic vehicle-to-pole test that is similar to the one used to test some vehicles under FMVSS No. 201, except that the test procedure would involve an angle of impact of 75 degrees (instead of 90 degrees) and a test speed of up to and including 32 km/h (20 mph) (instead of 24–29 km/h (15–18 mph)). We further proposed to amend FMVSS No. 201 such that, if the oblique 32 km/h (20 mph) pole test were added to FMVSS No. 214, vehicles certified to the latter test would be excluded from having to be certified to FMVSS No. 201's 90 degree, 29 km/h (18 mph) pole test.

Virtually all of the commenters supported the adoption of a pole test to enhance side impact occupant protection further. These commenters included the Alliance, which supported a 32 km/h (20 mph) test using a 75-degree oblique impact angle. However, Ferrari, Lotus, and Maserati supported a pole test that was harmonized with the pole test of EuroNCAP (perpendicular 29 km/h (18 mph) impact).

1. Speed

The NPRM proposed (in section S9.1.1 of the proposed regulatory text) that each vehicle must meet the oblique pole test requirements when tested ''at any speed up to and including 32 km/h (20 mph).'' The agency also requested comments on the alternative of a 29 km/h (18 mph) test speed, which is used in the optional perpendicular pole test of FMVSS No. 201.

Nearly all commenters supported the 32 km/h (20 mph) test speed. The Alliance supported a 32 km/h (20 mph) test speed, but recommended bounding it with a lower bound as is done with the FMVSS No. 201 optional pole test. FMVSS No. 201 sets a lower limit of 24 km/h (15 mph) in the pole test. In setting the FMVSS No. 201 final rule, NHTSA concluded that a 24 km/h (15 mph) lower limit was appropriate because 24 km/h (15 mph) represented the point at which occupants experience moderate to serious (AIS 2 and AIS 3) injuries. The agency believed that testing at impact speeds below which a dynamic head protection system would deploy or offer any meaningful safety benefits would serve no purpose. (64 FR 69665, December 14, 1999.) The Alliance and DaimlerChrysler commented that, since the increase in lateral velocity from a 29 km/h (18 mph) perpendicular pole test to a 32 km/h (20 mph) 75-degree oblique test is only 1.3 mph, the minimum oblique test speed should be 1 mph over the current minimum perpendicular test speed of 24 km/h (15 mph) in FMVSS No. 201.

Public Citizen expressed its support for a 32 km/h (20 mph) test speed, stating that such a speed ''appropriately protects from the depth of intrusion that occurs when passenger cars are hit in the side by a pickup truck or SUV.'' A private individual, Mr. William Watson, believed that the designs needed to comply with the higher test speed would not place an undue burden upon manufacturers, but simply provide a higher margin of safety for occupants. Autoliv supported the higher test speed of 32 km/h (20 mph) on the basis that the commenter believed it would benefit more occupants in real world crashes. It also stated that the higher speed would present some challenges, particularly for the new criteria for thorax protection. However, Autoliv did not anticipate that these challenges would affect its ability to meet product demand during the proposed phase-in requirements. TRW believed that the side protection systems designed to meet the requirements of the NPRM could perform acceptably for out-of-position (OOP) occupants.

Opposed to the 32 km/h (20 mph) test speed were Ferrari and Maserati. Ferrari believed that increasing the pole test speed from 18 to 20 mph would be excessively burdensome, forcing manufacturers to redesign side structures and head protection side bags. Further, Ferrari believed that it would force an increase in the power of the head protection side bag, which might lead to an increased injury risk for children and occupants that are OOP. The commenter believed that a pole test that is consistent with the EuroNCAP side pole impact test, i.e., an 18 mph perpendicular pole test, is the only way the test can be reasonable and practicable for small volume manufacturers.

Agency response: After carefully reviewing the comments, the agency has decided to adopt the pole test speed proposed in the NPRM. The oblique pole test procedure is conducted at any speed up to and including 32 km/h (20 mph). A higher test speed than 29 km/h (18 mph) will provide for a higher degree of safety and will benefit more occupants in the real world. As previously noted in the NPRM for this final rule, the agency found that crashes with a delta-V of 32 km/h (20 mph) or higher result in approximately half of the seriously injured occupants in narrow object side impact crashes (69 FR at 27997). A test conducted at 32 km/h (20 mph) maximum speed better represents the speed of real world crashes that result in serious injury than an 18-mph test. Based on our testing, we believe that it is feasible to meet the test requirements at 32 km/h (20 mph) and there would be little cost differential.

The practicability of meeting the requirements at the 32 km/h (20 mph) test speed was evidenced by the results of the agency's testing of the model year 2005 Subaru Forester, Volkswagen Beetle and Saab 9–3. We further note that the Beetle and the Saab 9–3 were also reported to be in compliance with the voluntary TWG requirements for out-of-position occupant assessment. Further, Autoliv and TRW commented that countermeasures could be designed to meet the higher speed oblique pole test, and also perform acceptably for out-of-position occupants.

We do not agree with the Alliance's suggestion of narrowing the oblique pole test speed range to 26 km/h to 32 km/h (16 to 20 mph). Limiting the test speed range would not ensure protection for side impact crashes that occur at delta-Vs under 26 km/h (16 mph). Our crash databases have shown that crashes with a delta-V of 26 km/h (16 mph) or less result in approximately a third of the fatalities and almost half of the MAIS 3–5 non-fatally injured occupants in near-side crashes. This analysis was based on front-outboard adult occupants with serious or fatal injuries in 1997–2003 NASS non-rollover, near-side crashes.[52] Based on the crash data, we believe that there is

[52] Delta-V distributions were derived from 1997–2003 CDS. Fatalities were adjusted to the 2001 FARS level, and non-fatal injuries to the 2001 GES level.

a demonstrated safety need to require manufacturers to ensure that vehicles provide improved protection in crashes below 26 km/h (16 mph).

We note that our motivation for this rulemaking was to establish a comprehensive side impact upgrade that required a systems approach to improve protection against head, thoracic, abdominal and pelvic injuries in a vehicle-to-pole test. It was not to duplicate FMVSS No. 201, which is primarily intended to address head impacts to the vehicle interior compartment. Only as a consideration of regulatory burden did we explore the degree to which the oblique pole test duplicated the requirements of FMVSS No. 201. While compliance with the FMVSS No. 214 oblique pole test supersedes the need to conduct a FMVSS No. 201 pole test, the agency did not intend to mimic the boundary conditions of that test.

Nor do we want to. When the 24 to 29 km/h (15 to 18 mph) pole test speed range was adopted in FMVSS No. 201 in 1999, side impact air bag systems were only starting to emerge. The goal of the agency in adopting a lower limit in FMVSS No. 201 was to reduce test burdens and to facilitate the introduction of these systems. The goal of today's rulemaking is to upgrade overall side impact protection, particularly in pole-type crashes. Since 1999, side impact air bags have become proven countermeasures that are effective in protecting against head, chest, abdominal and pelvic injuries, and in helping retain an occupant within the safe environment of the vehicle compartment. If the countermeasure is effective in reducing the risk of serious injury in crashes below 26 km/h (16 mph), we know of no compelling reason not to set a performance requirement that would necessitate its employment. If deploying the air bag is not needed to meet the injury criteria at a speed below a certain threshold, the manufacturer can make a manufacturing decision based on that fact when designing the vehicle. It may pose a test burden for the manufacturer to determine what that threshold should be, but it is a burden that is offset by the enhancement to side impact protection achievable in pole-type crashes.

For different vehicle designs, the threshold of when an air bag is needed to meet the injury criteria could differ. Establishing a lower test speed range in the oblique pole test could have the causal effect of establishing ''design points'' for restraint systems that may or may not be optimal to vehicle design. The threshold for air bag deployment (gray zone) can be dependent on many vehicle attributes, such as side structure strength, energy absorption, air bag characteristics, etc. One vehicle design may be able to meet the injury criteria without an air bag at 24 km/h (15 mph), while another might need an air bag to meet an oblique pole test at that same speed. To prescribe a 26 km/h (16 mph) lower bound for the test speed might force a test condition that may not be ideal for occupant safety, given individual gray zones and compliance margins. Therefore, to ensure occupant protection at impact speeds below 26 km/h (16 mph), the final rule adopts the proposed oblique pole test conditions up to and including 32 km/h (20 mph), rather than a reduced range of 26 km/h (16 mph) to 32 km/h (20 mph).

The agency is also not persuaded by Ferrari's comments that the oblique pole test would be excessively burdensome. As discussed in the lead time section of this notice, the agency believes that vehicle manufacturers will have ample time to redesign their vehicles to meet the new requirements. By complying with the FMVSS No. 214 oblique test, excessive burden from complying with the FMVSS No. 201 pole test is removed.

2. Angle

The proposed 75-degree impact angle was generally supported except by Ferrari, Lotus and Maserati, which supported a 90-degree test similar to that of EuroNCAP. Ferrari added that an oblique pole test would force the manufacturers to focus their efforts on specific test conditions, detrimental to other ones (e.g., out-of-position occupants).

DaimlerChrysler believed that the perpendicular pole impact versus the 75-degree impact is not radically different and would provide similar levels of occupant protection. However, it stated that the perpendicular approach had qualitative benefits, such as simplicity in test setup, reproducibility, test dummy capability, and harmonization. The commenter stated that, although the agency has encountered specific cases in which a vehicle designed to comply with the perpendicular impact failed to detect the 75-degree oblique pole impact, DaimlerChrysler was not aware of this as a real world issue.

In support of the proposed impact angle, William Watson believed that the 75-degree pole test is a clear improvement over the perpendicular test in terms of the real world applicability and occupant protection. However, Mr. Watson stated that choosing one specific test angle might lead to restraint and sensor designs that perform poorly for other angles. He believed that more than one impact angle should be tested, given the agency's data that suggests a difference of 15 degrees can produce significantly different sensing responses. Therefore, the commenter recommended that we retain the current perpendicular pole test and add the 75-degree oblique test as a supplemental requirement.

Agency response: The agency has decided to adopt the 75-degree impact angle proposed in the NPRM. The agency concludes that the oblique pole test will enhance safety because it is more representative of real-world side impact pole crashes than a 90-degree test. Frontal oblique crashes account for the highest percentage of seriously injured (MAIS 3+) near-side occupants in narrow object crashes, and our research indicates that the 75-degree impact is repeatable to simulate in a laboratory test.

A 75-degree approach angle is preferable to a 90-degree angle because the oblique impact exposes the dummy's head and thorax to both longitudinal and lateral crash forces that are typically experienced in real world side impacts. Weighted 1999–2001 NASS CDS side impact data show that in narrow object crashes, serious head and chest are dominant for both small and large stature occupants (69 FR 27998). The oblique pole test thus better emulates real world crash conditions than a perpendicular impact. NHTSA estimates that 311 lives would be saved by the oblique pole test using a 50th percentile adult male dummy and a 5th percentile adult female dummy,[53] while 224 lives would be saved by a perpendicular test using the same dummies. At a 3 percent discount rate, the cost per equivalent life saved is $1.84 million for an oblique impact test requirement, and $2.11 million for a perpendicular test requirement. At a 7 percent discount rate, the cost per equivalent life saved is $2.31 million for the oblique test, and $2.65 million for a perpendicular test.

Combination and other SIABs will generally be more protective if the agency adopted a 75-degree vehicle-to-pole test instead of a 90-degree one, particularly if the SID–IIs and ES–2re dummies were both used in the pole test. A SIAB just wide enough to meet a perpendicular pole test may be less protective in an oblique crash, as the occupant in an oblique crash will move laterally and forward at an angle rather than moving strictly laterally into the air

[53] With a curtain and 2-sensor system.

bag.[54] Some torso air bags may need to be redesigned to extend the air pocket further forward toward the A-pillar to provide coverage in a 75-degree oblique test. The VW Jetta, Honda Accord, and Subaru Forester received ''Good'' ratings in IIHS's side impact consumer information program when tested with the SID–IIs in a perpendicular impact. However, in our 214 fleet testing program with the SID–IIs, the VW Jetta resulted in a pelvic force value of 7,876 N, which exceeds the 5,525 N criterion of this final rule. In an oblique test, the SID–IIs in the Honda Accord measured a pelvic force value of 10,848 N. The Subaru Forester tested obliquely with the SID–IIs resulted in an abdominal deflection value of 45 mm. The oblique pole test will require these vehicles to provide protection of the 5th percentile adult female's abdomen/pelvis areas; these improvements would not generally result from a 90-degree test.

Other examples of how an oblique versus perpendicular impact can affect a vehicle's ability to provide head protection were provided in the NPRM. In a 75-degree test of a Nissan Maxima with the ES–2 dummy, the head of the dummy rotated into the pole notwithstanding the presence of a combination head/thorax side impact air bag. The HIC score was 5,254. In a 90-degree test, the same model year Maxima produced a HIC score of 130.[55]

In our test program, four of the 10 vehicles tested with the SID–IIs had side air curtains that exceeded 1,000 HIC in the oblique impact (see the agency's docketed technical report on the test program, summarized in Section IV of this preamble, for a full discussion of the test program). The SID–IIs rotated around the front edge of the air bag or hit the front-most pocket of the curtain, which allowed for the dummy's head to contact a portion of the air curtain/tether interface that did not cushion the impact. HIC values were in the thousands. These curtains will be more protective when designed to meet oblique pole test requirements.

Wider and more protective side air curtains resulting from an oblique pole test will be beneficial in reducing partial occupant ejection through side windows.[56] There were 5,400 ejected fatalities through front side windows in 2001. The fatality rate for an ejected vehicle occupant is three times as great as that for an occupant who remains inside of the vehicle. The best way to reduce complete ejection is for occupants to wear their safety belts. However, of the 5,400 ejected fatalities through front side windows, 2,200 were from partial ejections. Fatal injuries from partial ejection can occur even to belted occupants,[57] when their head protrudes outside the window and strikes the ground in a rollover or strikes the striking object (e.g., pole or a taller vehicle hood) in a side impact. Window curtains that meet the oblique pole test will better protect against these partial ejections.

We are not supportive of maintaining both the 75-degree oblique pole test and the FMVSS No. 201 pole test in the standard, as suggested by Mr. Watson. While the inclusion of both tests could provide more assurance of occupant safety, we are concerned whether the test burdens are justified. Although we found in our testing that some air bag systems that met the FMVSS No. 201 pole test did not deploy the air bag in the agency's 75-degree oblique pole test, we do not expect the opposite trend from the adoption of this regulation. Vehicles will be subject to testing by IIHS in its side impact consumer information program, which conducts 90-degree MDB tests. Side air bag sensors will therefore be designed to sense such impact orientations. Further, even in the absence of the IIHS test, we believe that the use of two test dummies, two seating procedures and an oblique angle in the FMVSS No. 214 pole test will induce the use of sensor designs and mounting locations that will be sufficiently robust to detect both 75-degree and 90-degree impacts.

3. Positioning the Seat for the Test

A. Fore-and-Aft Seating Position

For the oblique pole test, the agency proposed to position the test dummies fore-and-aft along the vehicle seat track, according to the current FMVSS No. 214 seat positioning procedure, as opposed to the procedure specified in FMVSS No. 201. The proposed procedure would place the seat at the full-forward position for the 5th percentile female dummy and the mid-track position for the 50th percentile male dummy.

Public Citizen and Advocates supported NHTSA's proposed seating position for the dummies. They believed that these positions would assure that air bags installed to comply with the standard would provide a relatively broad zone of protection. While supporting the two proposed seating positions, Mr. Watson believed that NHTSA should also test with the seating position fully forward, mid-track, and fully rearward to ensure the widest restraint coverage and the most robust sensing technique.

DaimlerChrysler and the Alliance supported the mid-track seating position for the ES–2 dummy. However, the Alliance stated that the WorldSID test dummy should be positioned according to the seat track and seat back adjustment procedure based on a University of Michigan Transportation Research Institute (UMTRI) Seating Accommodation Model. The Alliance stated that the UMTRI model is based on a study of actual seating positions selected by drivers who are the same size as the 50th percentile adult male frontal dummy and the 5th percentile adult female frontal crash test dummy. In its comment, IIHS stated that the UMTRI seat position should be used for both the 5th female dummy and for the ES–2re 50th percentile dummy. IIHS believed that the UMTRI procedure is more representative of real world seating behavior, which IIHS stated is typically rearward of the proposed positions. IIHS stated that if the agency decides to use the mid-track position for the 50th percentile male dummy, the range of occupant sizes protected by the proposed head protection will not be as large as intended by the agency.

Nissan did not support the proposed seat positions for the pole test. It believed that the dummy in the proposed positions might be close enough to the A- or B-pillar that these structures would interfere with the dummy's head prior to contact with the pole. Nissan believes that this circumstance could result in reduced test repeatability, and it therefore recommended the seat positions used in the FMVSS No. 201 pole test procedure.

Ferrari objected to the proposed positioning procedure for the 50th percentile male dummy. Ferrari stated that using only the control that primarily moves the seat in the fore-and-aft direction, as proposed in the new procedure, changes the mid-point of the seating position from the current position.

[54] Using two dummies in a 90-degree pole test will not necessarily lead to wider, more protective SIABs. If the SIAB were seat-mounted, the seat-mounted SIAB would travel along the seat track with the dummies. A SIAB could be tuned to meet a 90-degree pole test with both dummies and not provide benefits in an oblique impact.

[55] Other data from crash tests conducted in support of the NPRM showed that side air bags in a Ford Explorer and a Toyota Camry that were certified as meeting the requirements of the 90-degree pole test of FMVSS No. 201 did not inflate at all in an oblique (75 degree) test using a 5th percentile female dummy. The HIC results for the 5th percentile female (SID–IIsFRG) dummy placed in the driver's seats of these vehicles were in the thousands (13,125 and 8,706, respectively).

[56] ''Rollover Ejection Mitigation Using Inflatable Tubular Structures,'' Simula, *et al.,* 1998; ''Status of NHTSA's Ejection Mitigation Research Program,'' Willke, *et al.,* ESV 2003.

[57] About 60 percent of the partial ejections occurred to belted occupants.

Agency response: After carefully reviewing the comments on seating procedures, the agency decided to adopt the NPRM proposal on positioning the test dummies fore-and-aft along the vehicle seat track. We agree with commenters that stated these positions (full forward for the 5th percentile female dummy; mid-track for the 50th percentile male dummy) would assure that air bags installed to comply with the standard would provide a relatively broad zone of protection. While we also agree with Mr. Watson's suggestion that testing with the seat positioned in the full rearward position could provide even more coverage, we also had to maintain a level of practicability in establishing the requirements. Positioning the dummy further rearward could present potential B-pillar interference and repeatability issues, such as those cited by Nissan. Neither the agency nor the commenter has data to support such a proposal at this time.

We were not persuaded by IIHS's suggestion of using the UMTRI seat track and seat back adjustment for the SID–IIs and ES–2re dummies in the oblique pole test configuration. On February 23, 2004, NHTSA denied a petition for rulemaking to adopt the UMTRI procedure in FMVSS No. 214.[58] The agency concluded that there was a lack of evidence supporting the UMTRI procedure. IIHS noted in their FMVSS No. 214 comments that the UMTRI seating procedure typically positions both dummies rearward of the proposed positions. However, no data was provided to support the claim that the UMTRI position provided more coverage than that proposed by the NPRM. Furthermore, no data was provided to support that such a change in seating procedure would be practicable, repeatable, and result in measurable benefit. Therefore, we are not considering it for incorporation into FMVSS No. 214.

The Alliance's recommendation on how to seat the WorldSID dummy is out of scope for this rulemaking. As previously discussed, research will need to be conducted in conjunction with the federalization of that dummy.

In response to Nissan, we do not agree that the seating procedure would result in A- or B-pillar interference with the dummy's head prior to contact with the pole. We have not observed this in our crash tests to date. Further, no data was submitted to the agency to support this claim. Furthermore, our testing has shown that the oblique pole test procedure is repeatable. Accordingly, we do not agree it is necessary to adopt the FMVSS No. 201 pole test seating procedure.

In response to Ferrari, this final rule adopts the specification of the new positioning procedure that only the control that primarily moves the seat in the fore-and-aft direction is used to position the seat along the seat track. This procedure is simpler than the current FMVSS No. 214 procedure, and produces more repeatable seat positioning of complex power seats than the current procedure. We also believe that the differences, if any, in seat placement along the seat track will be minimal. The new procedure was used successfully in NHTSA's 214 fleet testing program (see Section IV, *supra*).

B. Head Restraints

The Alliance and Honda requested clarification of the positioning of head restraints for all seating positions. In the proposed regulatory text, sections that involve seating the SID–IIs dummy in the front and rear seats (proposed 8.3.2.2 and 8.3.3.2, respectively) state that any adjustable head restraint is to be positioned in the lowest and most forward position. However, sections that involve seating the ES–2re dummy in the front and rear seats (sections 8.3.1.2 and 8.3.4) state that any adjustable head restraint is to be positioned in the lowest and most forward position for the front seat, and in its highest position for the rear seat. The Alliance recommended that any adjustable head restraints be placed in the manufacturers' specified position, while Honda believes the head restraints should be positioned in its highest position, as currently required by FMVSS No. 214.

Agency response: We concur with the need for clarification of the proposed regulatory text pertaining to head restraint positioning. The agency's intent was to maintain the head restraint positioning currently used in the MDB test of FMVSS No. 214 for the ES–2re dummy (highest and most forward adjustment position) and to position the head restraint in the lowest and most forward position for the SID–IIs dummy. Accordingly, we have revised the ES–2re regulatory text to reflect our intent. We were not persuaded by the Alliance's recommendation to adopt the manufacturer's specified position for head restraint adjustment. The highest position of adjustment has been used for the SID dummy in FMVSS No. 214 MDB tests for many years, and we do not anticipate any significant differences in head restraint interaction with the ES–2re dummy that would warrant a change in specification. Furthermore, the Alliance did not provide a rationale for its requested change.

The final rule does, however, add clarification in the regulatory text for head restraint designs with adjustable backset when tested with the ES–2re dummy. Proposed paragraph S8.3.1.2 is amended to specify that an adjustable head restraint must be positioned to its highest and most forward adjustment position.

4. Impact Reference Line

S10.12.2 states that the test vehicle is propelled sideways so that its line of forward motion forms an angle of 285 (or 75) degrees (+/−3 degrees) for the right (or left) side impact with the vehicle's longitudinal centerline. The angle is measured counterclockwise from the vehicle's positive X-axis. The impact reference line is aligned with the center line of the rigid pole surface, as viewed in the direction of vehicle motion, so that, when the vehicle-to-pole contact occurs, the center line contacts the vehicle area bounded by two vertical planes parallel to and 38 mm (1.5 inches) forward and aft of the impact reference line.

Ferrari commented that contact between the center line of the rigid pole surface and the vehicle does not represent the initial contact between the pole and the vehicle. Ferrari requested that the proposed test procedure be modified so that the 38 mm tolerance refers to the initial impact point rather than the contact point of the center line of the pole surface as viewed from the direction of the vehicle motion.

Agency response: Ferrari provided two schematics to illustrate its comments. (*http://dmses.dot.gov/docimages/pdf92/338984_web.pdf*) In the schematics, Ferrari erroneously interpreted the forward motion of the test vehicle relative to the pole and initial impact point. In order to achieve the proper impact configuration, the test vehicle is propelled sideways at an angle (285 degrees for right and 75 degree for left side impact) into the stationary pole, not perpendicular as shown in the schematics. To clarify the test set up, the agency has decided to include in the compliance test procedure a schematic depicting the impact configuration.

5. Test Attitude

The NPRM proposed to refine how the vehicle test attitude is determined. Currently, the vehicle attitude is defined by measurements made from the ground (a level surface) to a reference point placed on the vehicle body above each of the wheels. These measurements are made with the vehicle in the ''as

[58] *See* 69 FR 8161.

delivered,'' ''fully loaded,'' and ''pre-test (or as tested)'' conditions. The NPRM proposed that the method used to determine the test attitude be revised to align with that used in S13.3 of FMVSS No. 208. In that provision, a test attitude is determined based on door-sill angle measurements to control the vehicle's pitch attitude.

The NPRM also proposed to define the vehicle's roll attitude by a left to right angle measured along a fixed reference point at the front and rear of the vehicle at the vehicle longitudinal center plane. NHTSA proposed these changes because measuring the angles more directly will better facilitate, and more accurately determine, the vehicle attitudes than by use of the method in current S6.2 of FMVSS No. 214 (specifying test procedures for the MDB test). In the MDB test, the dummy and vehicle instrumentation, high-speed cameras, associated brackets and instrumentation umbilical lines that are added to the vehicle make it difficult sometimes to achieve the corridor between the as delivered and fully loaded attitudes, particularly at the right front position of the vehicle. The agency also requested comments on keeping the present method used to determine vehicle test attitude, but adding a ± 10 mm tolerance.

DaimlerChrysler and the Alliance commented that there was no proposed specification regarding the vehicle's vertical position relative to ground. They believed that, for the MDB test, the resultant vehicle setup might not reproduce the intended relationship between the vehicle and MDB. The Alliance also stated that while the procedure would provide for measurement of vehicle pitch and roll attitude, it is not clear that this offers benefit with regard to execution of the test. The Alliance recommended that the current set procedure be retained with the following exception: in determining the fully loaded vehicle weight and attitude, there should be specifications on placing weights representing the necessary test dummies in the seating positions. Finally, the Alliance suggested that we provide direction on determining test attitude and ride height for vehicles equipped with dynamic suspension systems that adjust ride height based on vehicle velocity or that can be manually set by the driver for differing road conditions (*e.g.*, off-road, luxury ride, etc.).

Agency response: The vehicle attitude specifications assure that proper attitude is attained prior to impact. As stated in the NPRM, the agency believed that measuring pitch and roll angles more directly and more accurately determines the vehicle attitude than using the current method. The agency used the proposed method during the 214 fleet testing program conducted in support of this final rule. The test vehicles were loaded in accordance with S8.1, using instructions in the draft test procedure. Ballast representing the weight of the test device was placed in the seat to determine the ''fully loaded'' condition. The proposed method yielded the intended result of assuring proper attitude in the agency's pole tests. For these reasons, the agency has decided to adopt the proposed revised method for the pole test.

For the MDB test, the agency agrees that a specification regarding the vehicle's vertical position relative to ground is desirable. The agency has decided to maintain the present method used to determine vertical height measurements, but is adding a ± 10 mm tolerance. In addition, instructions to assure that conventional and dynamic suspensions are exercised prior to taking attitude measurements have been included in the agency's test procedure.

Regarding the Alliance's suggestion that there should be specifications on placing weights representing the necessary test dummies in the seating positions, NHTSA currently allows various forms of ballast (other than an actual dummy). We do not believe that instructions are needed regarding what ballast should be used or how the ballast should be placed on the seat for proper weight distribution. For our 214 fleet testing program, one test laboratory used a ''ballast dummy'' to attain the fully loaded condition, while another used sand bags. Both methods were acceptable, yielding valid results.

6. Rear Seat Pole Test

The NPRM proposed to apply the pole test to only the driver and front outboard passenger seats because years of conducting the optional pole test in FMVSS No. 201 have yielded substantial information about meeting pole test requirements for those seats, while far less information was known about the rear seat. The agency also believed that rear seat occupants make up a small percentage of the seriously injured occupants in side crashes. We also found it compelling that side air curtains generally cover both front and rear side window openings and thus would also afford some degree of head protection to rear seat occupants even in the absence of a test applying to the rear seat. We also recognized that applying the test to the rear seats would require at least twice as many tests per vehicle, increasing the cost and burden of the rulemaking, with minimal assured benefit.

Consumers Union, Advocates, Public Citizen, and Mr. Watson expressed concern about not applying the test to the rear seat. The commenters believed that equivalent protection in side impacts should be provided to rear seat occupants. Advocates commented that either the agency must also apply the pole test to rear seats or should modify the current FMVSS No. 214 MDB so that it induces dynamic protection countermeasures for the rear seat occupants. Advocates and Public Citizen believed that an additional pole test would encourage manufacturers to install side air bags for rear occupants and improve protection for the elderly and children, who are often seated in the rear of the vehicle. Mr. Watson believed that air bag sensing arrangements may not be able to deploy the countermeasures for a variety of rear door impacts, and therefore recommended that the agency require an identical pole test for the rear seat occupant. Autoliv suggested possibly regulating only head impacts for rear seat occupants since few vehicles have been currently developed for rear seat thorax protection during a pole impact.

Agency response: We have decided against applying the pole test to the rear seating positions. As noted earlier in this preamble, rear seat safety is enhanced by this final rule in several ways. For the first time, a HIC criterion is adopted for rear seat occupants. In addition, use of the SID–IIs (5th percentile adult female) test dummy in testing rear seats in the MDB test of FMVSS No. 214 (discussed later in this preamble) will assess the rear seat environment in protecting children, the elderly and small adults—a more vulnerable population than the mid-size adult male population—in rear seating positions in vehicle-to-vehicle crashes. The SID–IIs dummy is more representative of rear seat occupants than SID, and the injury assessment reference values we will use with the dummy are set at levels that reflect the effect of aging on tolerance.

However, with specific regard to the pole test, a consideration of several factors leads us to decline to apply the pole test to rear seating positions. Directly applying the pole test to the rear seat is not necessary for the pole test to enhance rear seat safety. Air curtains cover both front and rear side window openings, and are tethered to the A- and C-pillars of vehicles. Curtains tethered to the A- and C-pillars will be large enough to cover both front and rear side window openings and will

afford protection to both front and rear seat occupants in side impacts.

We believe that manufacturers will increasingly install air curtains in their vehicles because air curtains can potentially be used as a countermeasure in preventing ejection in rollovers. (''NHTSA Vehicle Safety Rulemaking Priorities and Supporting Research: 2003–2006,'' July 2003, Docket 15505.) NHTSA has announced that it is developing a proposal for an ejection mitigation containment requirement.[59] NHTSA believes that side curtains installed pursuant to FMVSS No. 214's pole test could readily be developed to satisfy the desired properties of a countermeasure. (NHTSA report ''Initiatives to Address the Mitigation of Rollovers,'' *supra.*) We believe that manufacturers will install curtains in increasing numbers of vehicles in response to this final rule, the voluntary commitment, and in anticipation of NHTSA's ejection mitigation rulemaking. The curtains will provide head protection to front and rear seat occupants in side impacts.

We have also decided against applying the pole test to rear seating positions because, as noted in the NPRM, according to 1999 and 2000 Fatality Analysis Reporting System (FARS) data, the front outboard seating positions account for 89.2 percent of total fatalities and 88.8 percent of total injured occupants in passenger cars, and 86.6 percent and 87.6 percent of total fatalities and total injured occupants in LTVs. While these are for all crash conditions, the percentages for side impacts with narrow objects are similar. In nearside crashes, rear occupants make up 7.3 percent, 10.2 percent and 4.4 percent of seriously injured persons in crashes with passenger cars, LTVs and narrow objects, respectively. As stated in the NPRM (69 FR 28011), the 1997–2001 NASS CDS annualized fatality distribution for rear outboard occupants indicates there were 22 fatalities caused by a vehicle-to-pole side crash, 7 of which were due to head injury.

In addition, we are not applying the pole test to rear positions out of a concern that more needs to be known about seat-mounted SIABs in rear seating positions. Currently, almost no vehicle has seat-mounted air bag systems in rear seats. If a pole test were applied to the rear seat, seat-mounted SIABs might emerge to meet chest protection requirements. At this time, we have limited information about the performance of rear seat-mounted air bag systems in meeting the TWG performance guidelines. We believe that more has to be learned about the risk to children in rear seating positions before we proceed with adopting a requirement that will encourage the installation of seat-mounted SIABs as a countermeasure to that requirement.

7. Door Closed

FMVSS No. 214 currently prohibits any side door that is struck by the MDB from separating totally from the vehicle (currently in S5.3.1 of the standard). The standard also requires any door (including a rear hatchback or tailgate) that is not struck by the moving deformable barrier to meet the following requirements: the door shall not disengage from the latched position; the latch shall not separate from the striker, and the hinge components shall not separate from each other or from their attachment to the vehicle; and neither the latch nor the hinge systems of the door shall pull out of their anchorages. The NPRM proposed to apply the same door separation/opening prohibitions to vehicles tested in the vehicle-to-pole tests.

The only comments on the proposal were from Advocates and Public Citizen, which opposed the proposal. The commenters believed that, to improve ''anti-ejection countermeasures'' the standard should not permit struck doors to become unlatched in the pole test.

Agency response: This final rule does not make a change from the proposal. NHTSA has not observed the struck door unlatching in the optional pole test of FMVSS No. 201, or in the agency's vehicle pole tests discussed in the technical report on the test program. The test data indicate that vehicle manufacturers are already designing their vehicles such that the struck door will not unlatch during the pole test.

8. FMVSS No. 201 Pole Test

FMVSS No. 201 specifies an optional 90-degree, 29 km/h (18 mph) pole test using a SID–H3 driver dummy (1000 HIC_{36} test criterion). The NPRM proposed to amend FMVSS No. 201 to exclude vehicles certified to FMVSS No. 214's oblique 32 km/h (20 mph) pole test from the 90-degree, 29 km/h (18 mph) pole test in FMVSS No. 201. The agency believed that a vehicle that met the oblique 32 km/h (20 mph) pole test would also meet FMVSS No. 201's 90-degree 29 km/h (18 mph) test. Thus, the agency proposed to eliminate the FMVSS No. 201 optional pole test for vehicles certified to the FMVSS No. 214 oblique pole test, to delete an unnecessary test burden on manufacturers.

Advocates, AIAM and the Alliance supported the agency's proposal to exclude vehicles meeting an FMVSS No. 214 pole test from FMVSS No. 201's 90-degree, 29 km/h (18 mph) pole test. Advocates agreed with the NPRM that a vehicle meeting the proposed pole test would also meet the optional pole test of FMVSS No. 201.

Honda suggested a further exclusion of vehicles from a requirement of FMVSS No. 201. Honda asked NHTSA to consider excluding vehicles from the armrest requirements of S5.5.1 if the vehicles comply with the oblique pole test of FMVSS No. 214. Honda believes that: ''If a vehicle meets the proposed requirements, that compliance should supercede the armrest requirements of FMVSS 201.''[60]

Agency response: The FMVSS No. 214 oblique pole test encompasses and goes beyond the FMVSS No. 201 pole crash test and thus renders unnecessary the latter test. Seat-mounted side impact air bags that deploy into an area far enough forward to cushion a 5th percentile female dummy's head in a 32 km/h (20 mph) oblique impact are also likely to protect a 50th percentile male's head in a perpendicular one. Similarly, an air curtain tethered to the A- and C-pillars that meets an oblique crash test is also likely to provide coverage in a perpendicular crash. Accordingly, this final rule adopts the proposed amendment to FMVSS No. 201. It should be noted that targets near the stowed HPS are still subject to the head form test of FMVSS No. 201, conducted at the 19.3 km/h (12 mph) test speed specified in that standard.

This final rule does not make Honda's suggested deletion of the arm rest requirements of FMVSS No. 201. The suggested change was not proposed in the NPRM.

9. Quasi Static Test

The Alliance, AIAM, Lotus, Maserati, and Ferrari suggested that NHTSA delete the quasi-static test requirements from FMVSS No. 214 if the pole test is

[59] Additionally, Sec. 10301 of SAFETEA–LU requires the Secretary to issue by October 1, 2009 an ejection mitigation final rule reducing complete and partial ejections of occupants from outboard seating positions (49 U.S.C. 30128(c)(1)).

[60] FMVSS No. 201 requires each armrest to meet one of the following: (a) Be constructed with energy-absorbing material and deflect or collapse laterally at least 50 mm without permitting contact with the underlying rigid material; (b) be constructed with energy-absorbing material that deflects or collapses to within 32 mm of a rigid test panel surface without permitting contact with any rigid material, and the rigid material between 13 and 32 mm from the panel surface must have a minimum vertical height of not less than 25 mm; or (c) along not less than 50 continuous mm of its length, the armrest shall, when measured vertically in side elevation, provide at least 55 mm of coverage within the pelvic impact area.

adopted. (A summary of FMVSS No. 214's current requirements is in Appendix B of this preamble.) The quasi-static requirements limit the extent to which the side door structure of a vehicle is pushed into the passenger compartment during a side impact. The standard requires each side door to resist crush forces that are applied by a piston pressing a 300 mm (12 inch) steel cylinder against the door's outer surface in a laboratory test. Since the requirement became effective in 1973, vehicle manufacturers have generally chosen to meet the requirement by reinforcing the side doors with metal beams. Ferrari stated, ''The purpose of the static door crush resistance test in the existing FMVSS No. 214 is to guarantee the ability of the vehicle to provide some kind of protection in a side impact against a narrow object.'' Commenters believed that the pole test would assess the same performance, making the quasi-static test redundant and burdensome.

In contrast, Public Citizen recommended that the agency evaluate the potential for adding an intrusion limit to the proposed pole test, in addition to the dummy injury criteria. The suggested requirement would regulate the amount of pole intrusion into the occupant survival space. Public Citizen believes that the level of intrusion into the occupant space is closely correlated with the level of occupant injury risk.

Agency response: This final rule does not remove the quasi-static test from FMVSS No. 214. Removing the test is beyond the scope of the NPRM. Further, there is a safety need for the test. To meet the quasi-static test, vehicle manufacturers have equipped vehicles with side door beams which transmit the force sideways to the struck vehicle, thus reducing the amount of intrusion toward the occupant and slowing down the rate of that intrusion.[61] NHTSA found that the side door beams were 14 percent effective in reducing fatality risk for nearside and farside occupants in single-vehicle side impacts.[62] When this group of crashes was further limited to impacts with a single fixed object, fatality reduction was 23 percent. The agency believes that the beam acts like an internal guard to allow a car to slide past a pole or tree, with a longer, shallower crush pattern on the car. Beams were also found to be effective in lower-speed multivehicle crashes, reducing the risk of nonfatal injuries. Kahane (2007). The quasi-static test is needed, particularly for doors of the vehicle that are not impacted by the pole in the oblique pole test (such as the rear compartment doors).

This final rule does not add an intrusion limit to the pole test requirements adopted today. Adding an intrusion limit is beyond the scope of the NPRM. Further, not enough information is known at this time about the need for an intrusion limit, given that the injury criteria of the pole test act to limit the risk of injury to an occupant.

10. Vehicle Exclusions

The agency proposed subjecting vehicles with a GVWR of 4,536 kg (10,000 lb) or less to the oblique pole test, with certain exceptions. The agency proposed excluding: motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), vehicles equipped with wheelchair lifts, vehicles with raised or altered roof designs, and vehicles which have no doors, or exclusively have doors that are designed to be easily attached or removed so that the vehicle can be operated without doors. The agency believed that many vehicles within these categories tend to have unusual side structures that may not be suitable for pole testing or have features that could pose practicability problems in meeting the test. Comments were requested on the need to exclude other types of vehicles from the pole test, such as convertibles that lack a roof structure enabling the installation of an air curtain.

The proposed exclusions are adopted, except to the extent discussed below in this section.

i. GVWR. Advocates and Public Citizen supported the inclusion of vehicles with a GVWR of 4,536 kg (10,000 lb) or less, while the Alliance believed that vehicles above a GVWR of 3,855 kg (8,500 lb) should be excluded. The Alliance believed that the agency did not show that the requirement would be practicable for vehicles with a GVWR above 3,855 kg (8,500 lb), and also stated that a safety need for applying the pole test to those vehicles has not been shown.

Agency response: After consideration of the comments and test data from the NHTSA 214 fleet testing program (see Section IV of this preamble, *supra*) and other information, we are adopting the proposal that the performance requirements for the oblique pole test should apply to all vehicles with a GVWR of 4,536 kg (10,000 lb) or less.

One of the vehicle models the agency tested in its vehicle research program had a 4,082 kg (9,000 lb) GVWR. This was a model year 2005 Dodge Ram 2500 equipped with side curtain air bags. The agency tested this vehicle in two vehicle-to-pole tests with the ES–2re dummy. In the first test, the side curtain air bags did not deploy, and consequently, the ES–2re dummy resulted in high injury measures, including a HIC of 5,748, 47 mm of rib deflection, and a lower spine acceleration of 86 g. The test results demonstrated a need for improved sensors and side impact protection for the occupants of this vehicle. In the second test, using the same vehicle model, the side curtain air bags were deployed remotely at 12 msec,[63] and the resulting HIC value was 331. The results of this test showed that the deployment of the side curtain air bag resulted in significant HIC reductions for the ES–2re dummy (from 5,748 to 331). The ES–2re dummy was chosen for use in the agency's testing since it is likely to be the most challenging pole test configuration of the two required. The ES–2re is equipped with more instrumentation in the abdomen and thorax, and its larger mass requires more energy management by the restraint system. Although the rib deflections and abdominal force measurements for the ES–2re exceeded the IARVs, the vehicle was not equipped with a thorax side air bag. We believe that these measures would be improved with a thorax side air bag, and possible structural enhancements.

The agency does not agree with the Alliance that vehicles over 3,855 kg (8,500 lb) GVWR should be excluded from the pole test. In side impacts with poles and trees, the objects struck are typically taller than the striking vehicle. There are no indications of any lesser safety need for side impact protection for these vehicles. These vehicles are driven on the same roads and at the same times as other LTVs, and are thus subject to the same safety risks as other LTVs. NHTSA is not aware of any special characteristic of these vehicles that would reduce such risks.[64] In addition, the Alliance did not suggest

[61] Kahane, C.J., An Evaluation of Side Impact Crash, FMVSS 214 TTI(d) Improvements and Side air Bags, NHTSA Technical Report No. DOT HS 810 748, Washington, DC 2007.

[62] Kahane, C.J., An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214, NHTSA Technical Report No. DOT HS 806 314, Washington, DC 1982.

[63] Since the side crash sensor was unable to deploy the air bags in the oblique pole test configuration in the first test, the side curtain air bags were deployed remotely.

[64] Moreover, since the industry's voluntary commitment to install side air bags in vehicles does not apply to vehicles with a GVWR greater than 3,855 kg (8,500 lb), applying the pole test to the vehicles assures that SIABs will be provided.

why the pole test might be practicable for vehicles with lower GVWR, but not for vehicles with a GVWR above 3,855 kg (8,500 lb). We believe manufacturers can employ comparable restraint systems and countermeasure strategies to comply with the oblique pole test.

However, the test of the Dodge Ram 2500 (9,000 lb GVWR) indicated that vehicles with a GVWR greater than 3,855 kg (8,500 lb) may need more time than other vehicles to meet the pole test requirements, since the vehicles have never been regulated under FMVSS No. 214's dynamic requirements and are not subject to the industry's voluntary commitment to install side air bags. These vehicles may need more structural enhancements than other vehicles since they will be newly subject to side crash requirements, and a demanding pole test at that. Accordingly, this final rule provides vehicles with a GVWR greater than 3,855 kg (8,500 lb) until the last year of the phase-in to meet the pole test requirements.

ii. Convertibles. The Alliance, AIAM, Nissan, DaimlerChrysler and Lotus recommended the exclusion of convertible vehicles from the pole test. The Alliance stated that we did not demonstrate it is practicable to implement countermeasures, while meeting the TWG OOP guidelines. It also believed that convertible vehicles should be excluded from all requirements because the lack of roof structure affects the overall response of a vehicle in a pole test, not just the HIC response.

AIAM believed that the inherent design constraints of convertibles prevent the compliance of the proposed pole test. Similarly, Nissan believed that convertibles lack the structural components necessary to store and deploy a curtain air bag and that these vehicles should be excluded from the HIC response requirement in the pole test. DaimlerChrysler believed that convertibles should be excluded because, the commenter stated, it is not practicable within the architectural limitations of convertibles to provide the supplemental structure to the vehicle to replace what the roof and roof rail can contribute in sedans and coupes to reduce penetration by the pole into the occupant compartment. Lotus commented that the lightweight performance convertible type vehicle would not be able to comply with the pole test requirements without the introduction of some new, and as yet unknown, technology.

Autoliv commented that it is currently working on developing a restraint system to protect occupants in a pole impact for applications such as a convertible. Autoliv stated that the systems do not, however, address the structural challenges that may be involved in applying the pole test requirement to all vehicles that lack a roof structure.

Agency response: After careful consideration of the comments, NHTSA has decided against excluding convertibles from the pole test requirements. In our comparative analysis between convertibles and all other passenger cars in side impact crashes with fixed objects, it was found that 11.3 percent of convertible fatalities are from single vehicle side impacts into poles/trees, compared to 6.5 percent of other passenger car fatalities from single vehicle side impacts into poles/trees. The fatality rate[65] from single vehicle side impacts into poles/trees is 9.64 for convertibles, and 6.12 for all other passenger cars. When specifically looking at pole/tree fatality rates, convertibles are 58 percent higher than all other passenger cars. In general, NHTSA's crash data indicate that convertibles have higher rates of fatalities in run-off-the-road type crashes, such as single vehicle side impacts, rollovers, etc. Consequently, requiring enhanced protection against tree and pole side impacts will be paramount in improving the safety of these vehicles.

We have also observed head/thorax countermeasures that are effective and practicable for installation in convertible body types. While we agree with Nissan that roof-rail design air curtains may not be practicable to deploy and store in a convertible vehicle, we do believe that head/thorax air bag systems, or even door-mounted inflatable curtains, as introduced in the 2006 model year Volvo C70 convertible, have merit. In our 214 fleet testing program, we included two convertible vehicle models in our crash test matrix. These were the 2005 model year Saab 9–3 convertible and 2005 model year Volkswagen Beetle. Both vehicle models were tested in the oblique pole test with the ES–2re dummy.[66] In each case, the vehicle was able to meet the requirements of this final rule and demonstrated that compliance with the requirements for both head and chest injury criteria is practicable. For the Saab, HIC was 254, chest deflection was 40 mm, abdominal force was 841 N, and pelvic force was 2914 N. For the Beetle, HIC was 315, chest deflection was 37 mm, abdominal force was 1018 N, and pelvic force was 3815 N.[67] The Saab 9–3 and Volkswagen Beetle demonstrated practicability along a range of the convertible cost spectrum. This fact, combined with the higher fatality risk mentioned earlier, leads NHTSA to believe that head/thorax countermeasures will be at least as cost-effective for convertibles as they are for other vehicles. We are not persuaded that solutions are unknown or not available to convertibles as a whole, as suggested by Lotus.

In response to the Alliance's concern about meeting the TWG OOP guidelines, we note that vehicle manufacturers for both the Saab 9–3 and the VW Beetle reported that they comply with the TWG OOP guidelines according to our 2005 Buying a Safer Car information. Therefore, we believe that the agency has demonstrated practicability of the pole test and of meeting the head and chest requirements. Our tests have shown that the lack of a roof structure in the pole test was not an insurmountable design obstacle for providing improved side crash protection. Therefore, we conclude that HIC, and all other applicable injury measures, should be regulated in this test.

iii. Proximity to a Door

Maserati and Ferrari noted that under the current S3(e)(1) of FMVSS No. 214's quasi-static test, a vehicle need not meet the static test requirements for any side door located so that no point on a 10-inch horizontal longitudinal line passing through and bisected by the H-point of a manikin placed in any seat falls within the transverse, horizontal projection of the door's opening. The commenters believed that under that provision, a vehicle is excluded from the static test requirement if its side door is located so that the H-point of the manikin is below the sill of the vehicle. Ferrari stated, ''if a vehicle is exempt

[65] Data source: FARS 1999–2003. Model years 1998–2002 were used. Total registration years (in millions) were 140.8 for all other passenger cars and 4.7 for convertibles. The fatalities per million registration years in single vehicle side crashes were 11.32 for all other passenger cars and 16.71 for convertibles. The fatalities per million registration years in single vehicle side ''pole/tree'' crashes were 6.12 for all other passenger cars and 9.64 for convertibles.

[66] The ES–2re dummy was chosen for use in the agency's testing since it is likely to be more challenging pole test configuration than the SID–IIs test. We determined that it would dbe more difficult for seat-mounted systems to meet the performance criteria using the ES–2 than when tested with the SID–IIs. The ES–2re is equipped with more instrumentation in the abdomen and thorax, and its larger mass requires more energy management by the restraint system.

[67] Injury criteria are: HIC 1000, chest deflection 44 mm, abdominal force 2500 N, and pelvic force 6000 N.

under current S3(e), it should likewise be exempt from the proposed pole test.''

Agency response: We do not agree with Maserati and Ferrari that an exclusion from the pole test requirements is appropriate if the H-point of a manikin placed in any seat is below the sill of the vehicle, and thus does not fall ''within the transverse, horizontal projection of the door's opening.'' The agency's rationale for the exclusion in question from the static test does not apply to the pole test.

In the June 14, 1991 FMVSS No. 214 final rule that adopted the exclusion (56 FR 27427), the agency stated that there was little safety benefit from having a side door beam requirement for those door openings that are unlikely to have occupants sitting near them (i.e., within 10 inches of the door opening). In the static test, the loading device is centered on the door opening, and a load is applied until a specified load is achieved. The door must prevent intrusion of the door structure. If no occupant will be seated within 10 inches of the door opening, the requirement limiting intrusion to 10 inches is unnecessary. (As to whether the exclusion should apply to situations where the manikin is seated within 10 inches of the door, but below the sill, will not be addressed today.)

In the oblique pole test, the pole is aligned with the head CG of the seated dummy. An occupant who is seated ''outboard'' next to a door but below the transverse, horizontal projection of the door's opening could suffer injuries, especially head injury, in a tree/pole impact if side air bags or other countermeasures were not installed. Accordingly, the pole test requirement will yield meaningful results for the vehicles in question, and the exclusion will not be extended as requested.

iv. Removable Doors

The Alliance and DaimlerChrysler believed that vehicles without doors or easily removable doors, now excluded from the MDB and quasi-static tests under S2(c) and S3(e)(4) of the current standard, respectively, should also be excluded from the pole test since the lack of door structure makes meeting the test requirements impracticable. On the other hand, Advocates objected to excluding vehicles with no or removable doors since, the commenter believed, the exclusion would allow manufacturers to avoid providing adequate side impact protection.

Agency response: We agree with excluding vehicles without doors or easily removable doors from the oblique pole test since the lack of door structure makes meeting the test requirements impracticable, as suggested by DaimlerChrysler. No data were provided by Advocates, or other commenters, to suggest that there are engineering solutions or countermeasures to meet the dynamic pole test requirements for vehicles without doors or easily removable doors. We believe that applying the pole test to those vehicles would effectively eliminate them from the marketplace.

v. Vehicles With Partitions

NTEA recommended an additional exclusion of vehicles equipped with a partition behind the front seat area. NTEA believed that ''a bulkhead or partition will almost certainly invalidate any chassis manufacturer's compliance statement that may be available for a vehicle equipped with side impact protection such as a side curtain air bag.''

Agency response: We do not agree with an exclusion of partition-equipped vehicles. We believe the exclusion is too broad and could encompass more vehicles than necessary. NTEA noted that the affected vehicles typically include panel vans with a bulkhead to separate the front seat occupants from bulk cargo placed in the rear, or buses with a partition separating the bus driver from the rest of the passenger compartment. We note that the vehicles also include police vehicles, taxis, and limousines. Although we acknowledge that a bulkhead or partition installed by a second-stage manufacturer or alterer is incompatible with some current side curtain air bag systems tethered from the A- to C-pillars, second-stage manufacturers and alterers have alternatives, discussed below, that would enable them to certify to the pole test.

We believe that incomplete vehicles and completed cargo vans will be available with seat-mounted or door-mounted head/thorax air bag systems. Not all cargo vans will have side curtain air bag systems that are tethered from the A- to the C-pillar. Cargo van manufacturers are not likely to install A-to C-pillar side curtain air bag systems since these vehicles have no rear seats or rear window openings. (Likewise, small bus manufacturers are not likely to extend side air curtains the full length of the bus.) Since the pole test is only applied to the driver and right front passenger seating locations, incomplete cargo van manufacturers will likely certify the vehicles to the pole test using seat-mounted SIABs (or may develop air curtain technology that involve designs other than tethering the curtain to the A- and C-pillars). A partition can be installed in these vehicles without invalidating the incomplete manufacturer's compliance statement.

We also note that this final rule provides alterers and multi stage vehicle manufacturers an extra year of lead time to accommodate any necessary changes.[68] Between now and that date, they can work with manufacturers of incomplete and complete vehicles to develop seat-mounted SIABs and other technologies that would enable them to install the life-saving devices in vehicles that have partitions.

vi. Wheelchair Restraints

NMEDA believed that we should exclude vehicles with wheelchair restraints that allow the wheelchair to be used as a designated seating position. NMEDA noted ''many wheelchair users drive their vehicles from a wheelchair or ride in the front row passenger position, again in a wheelchair. In these cases, the wheelchair is secured to the vehicle floor, and the occupant is restrained with a type 2 seat belt assembly.''

Agency response: An exclusion of any vehicle with wheelchair restraints is overly broad. However, we agree that vehicles in which a wheelchair is to be used in place of the driver's or right front passenger's seating position should be excluded from the pole test for that seating position. The vehicles are excluded out of practicability concerns. If a seat that had seat-mounted SIABs were removed from a front outboard seating position, the vehicle would no longer have the countermeasure installed to meet the pole test. Installing a complying air curtain in these vehicles is likely beyond the capabilities of most small businesses modifying the vehicle. Even if the vehicle were originally manufactured with an air curtain, a vehicle tested to the oblique pole test with the test dummy in a wheelchair instead of the OEM driver or passenger seat might not meet the test requirements. Accordingly, vehicles in which the seat for the driver or right front passenger has been removed and wheelchair restraints installed in place of the seat are excluded from meeting the oblique pole test at that removed seating position.

[68] This accords with the amendments set forth in the agency's final rule on ''Vehicles Built in Two or More Stages,'' 70 FR 7414, February 14, 2005, Docket 5673. The February 14, 2005 final rule also added a new process under which intermediate and final-stage manufacturers and alterers can obtain temporary exemptions from dynamic performance requirements (49 CFR part 555).

vii. Altered (Modified) Roof or Lowered Floor

The agency proposed excluding vehicles with altered or raised roof designs from the pole test, and proposed using the definitions for ''altered roof'' and ''raised roof'' set forth in FMVSS No. 216, ''Roof crush resistance.'' [69]

NMEDA suggested that vehicles with altered or raised roofs should be excluded from both the HIC and thoracic requirements because, the commenter believed, side air bag systems may have to be disabled to accommodate the raised/altered roof conversion. Similarly, the commenter believed that modifiers lowering the floor by modifying the SIAB sensor system as originally installed would also have an extremely difficult time to certify.

Agency response: We agree that vehicles that have had the roof rail or floor rail modified should be excluded from the pole test.[70] The vehicles are excluded out of practicability concerns, because roof rails and floor rails are typically integral parts of side impact protection systems. Modifying the roof or floor rail structures may affect the vehicle's performance in meeting the oblique pole test requirements.

This final rule slightly expands the proposed definition of ''altered roof,'' because the FMVSS No. 216 definition was too narrow to meet the intent of the agency in excluding vehicles with altered roof rails. The proposed definition of altered roof (from FMVSS No. 216) only applied to a replacement roof that is higher than the original roof. We have modified the definition such that it is not incumbent on the replacement roof being higher than the original roof. There would be practicability issues in meeting the pole test for entities modifying the original roof rails of a vehicle even if the replacement roof were not higher than the original roof. In addition, if the original roof rail were modified, there would also be practicability problems for entities using glazing materials in the replacement roof. Thus, unlike the FMVSS No. 216 definition, the FMVSS No. 214 definition does not exclude from the definition replacement roofs on vehicles whose original roof has been replaced by a roof that consists of glazing materials. This final rule also excludes on practicability grounds vehicles that have had their original roof rails removed and not replaced, i.e., as in the conversion of a hardtop vehicle to a convertible. Entities involved in such conversions are usually small businesses. The FMVSS No. 214 definition is changed to ''modified roof'' to distinguish it from the FMVSS No. 216 definition of altered roof.

viii. 6-Way Seats

NMEDA stated that mobility industry companies commonly replace front row seats with extended travel seat bases (''6-way seats'') to facilitate vehicle access. It believed that because the modified seat bases are generally less stable than the original seats, the pole test would result in higher HIC values in vehicles with extended movement seating systems than in vehicles with OEM seat bases. NMEDA thus recommended that we exclude vehicles with extended travel seating systems installed as a part of a second-stage manufacturing process or by a vehicle alterer.

Agency response: We have decided that vehicles with extended travel seat bases and other seating systems designed to facilitate vehicle access are not excluded from this final rule. NMEDA provided no data to support its assertion that a modified seat base would necessarily cause extended movement and higher HIC values in the required tests. Further, no explanation was provided as to why these seat bases cannot be built structurally comparable to the original seat. We do not believe that providing additional reinforcements to secure the seat is an insurmountable engineering task. If higher HIC values are occurring, that supports our belief that better designs are needed for occupants of these vehicles.

ix. Multistage Manufacturers

NTEA suggested that the final rule exclude ''vehicles built in two or more stages that are equipped with a cargo carrying, load bearing or work-performing body or equipment.'' The commenter stated that its members typically certify that their vehicles meet dynamic testing standards by ''using so-called 'pass-through' compliance.'' NTEA is concerned that chassis manufacturers ''may state that subsequent stage manufacturers are unable to do anything in the vicinity of'' side curtain air bags or head bags.

The commenter also believed that there are no viable alternatives available to its members to demonstrate compliance other than by using pass-through compliance. NTEA stated that its members cannot certify vehicles based on engineering analyses because its members do not have the necessary level of experience with a new requirement of this nature, or previous crash test data, which NTEA believed are needed for an engineering analyses. NTEA stated that computer modeling is unavailable because the commenter believed it would be very expensive and not widely available to its members. The commenter stated that consortium dynamic testing is unavailable because the FMVSS No. 214 tests ''are vehicle specific, [so] even minor trim differences in a single model could produce significantly different test results, let alone varying chassis and body combinations.'' With regard to actual crash testing, NTEA stated: ''It would be a practical impossibility for these companies to test each of these configurations to sell the one or two of each configuration that have been ordered by a customer.''

Agency response: NHTSA declines NTEA's request to exclude from the pole test vehicles built in two or more stages that are equipped with a cargo carrying, load bearing or work-performing body or equipment. We do not believe that there is a need for a blanket exclusion of these vehicles. NTEA was concerned that incomplete vehicle manufacturers ''may state that subsequent stage manufacturers are unable to do anything in the vicinity of'' side curtain air bags or head bags. We believe that incomplete vehicle manufacturers will accommodate the needs of final-stage manufacturers to produce the vehicles. Chassis-cabs, a type of incomplete vehicle often acquired by final-stage manufacturers for manufacturing vehicles, have a significant portion of the occupant compartment completed. Chassis-cab manufacturers will likely produce incomplete vehicles with seat- or roof-mounted head/thorax air bag systems already installed. As long as the final-stage manufacturer meets the conditions of the incomplete vehicle document (and NTEA has not shown that final stage manufacturers will not be able to meet those conditions) the manufacturers may rely on the incomplete vehicle manufacturer's

[69] FMVSS No. 216 defines ''altered roof'' as: ''the replacement roof on a motor vehicle whose original roof has been removed, in part or in total, and replaced by a roof that is higher than the original roof. The replacement roof on a motor vehicle whose original roof has been replaced, in whole or in part, by a roof that consists of glazing materials, such as those in T-tops and sunroofs, and is located at the level of the original roof, is not considered to be an altered roof.'' FMVSS No. 216 states: ''Raised roof means, with respect to a roof which includes an area that protrudes above the surrounding exterior roof structure, that protruding area of the roof.''

[70] Vehicles with lowered floors are currently not excluded from the MDB test. Alterers and multistage manufacturers have been certifying their vehicles with lowered floors to the MDB test since 1998. Given the practicability of meeting the current MDB test, this final rule does not exclude lowered floor vehicles from the applicability of the MDB test adopted today.

certification and pass it through when certifying the completed vehicle.[71]

To the degree that final stage manufacturers must certify the compliance of their vehicles other than by using ''pass-through'' certification, we have provided these manufacturers until September 1, 2014 to work with manufacturers of incomplete vehicles, seating systems and SIABs to develop systems that will enable them to certify to FMVSS No. 214's pole test. They can obtain seat-mounted SIABs and work with the suppliers, individually or as a consortium, to develop the information to install the seat-mounted systems in their vehicles. Because a wholesale exclusion of vehicles built in two or more stages that are equipped with a cargo carrying, load bearing or work-performing body or equipment has not been justified, we are not adopting an across-the-board exclusion of these vehicles.

x. Other Issues

The NPRM proposed excluding tow trucks and dump trucks from the pole test. NTEA commented that it was not aware of any dump trucks or tow trucks with GVWRs of 4,536 kg (10,000 lb) or less, so the vehicles would be excluded from the pole test based on the GVWR of the vehicles. Considering this information, the express exclusion is unnecessary, and we have removed it from the regulatory text. (For that reason, we have also removed the express exclusion from the section excluding vehicles from the MDB test requirements.)

11. Practicability

The Alliance believed that the agency did not demonstrate that attaining the IARVs would be practicable. The commenter stated, ''Based on the information provided to support the NPRM, the agency has not identified one single vehicle that has met all of the proposed injury criteria in all of the proposed tests. Indeed, no one single vehicle has been subject to the entire suite of proposed crash tests. Therefore, the practicability of the proposed rule has not been demonstrated.''

NHTSA disagrees with the commenter's view. In our test program, the Subaru Forester and the Honda CRV met the performance criteria for the SID–IIs dummy. The Honda Accord and VW Jetta almost met all the IARVs when tested with the SID–IIs dummy. The Accord and Jetta had relatively low values for HIC and lower spine acceleration, and did not meet only the pelvic force criterion. The Honda Accord, VW Jetta, VW Beetle convertible, and Saab 9–3 convertible met the performance criteria for the ES–2re.

It is not surprising that the vehicles we tested did not meet the IARVs for both the SID–IIs and the ES–2re, because the oblique pole test was developed to induce improvements that would protect more occupants in more crash situations than current vehicles. NHTSA need not demonstrate that any current vehicle meets all the new requirements to show that an FMVSS will be practicable within the meaning of the Safety Act when fully implemented. A determination of practicability calls for an exercise in judgment by the agency, based on information about the performance of current designs and the likely effect of design improvements and new technologies on performance.

The fact that no current designs met the requirements when tested with both the SID–IIs and the ES–2re does not show the requirements will not be practicable, but it does require the agency to use its judgment carefully to ensure that the new requirements will be practicable within the lead time provided. In this case, we have ensured that the provided lead time and phase-in schedule assures that manufacturers can make long range plans for improved sensor designs, SIABs and arm rests to meet the IARVs for both test dummies. The test results from our 2005 test program show that some SIABs performed well with the SID–IIs, while others performed well with the ES–2re. We believe that current SIAB systems can be redesigned and implemented to provide occupant protection to the populations represented by both the SID–IIs and the ES–2re test dummies. For example, some window curtains adequately protect the head of the mid-size male dummy but may need to be widened and lengthened to ensure that the head of the SID–IIs is cushioned at the forward edge of the curtain. Some vehicles may need to use a seat-mounted SIAB (existing technology), in addition to a curtain, to meet the thoracic, abdominal and/or pelvic injury criteria for both dummies. We believe that vehicle manufacturers are capable of making these and other improvements to SIAB systems.

Manufacturers have made steady and notable progress in developing, improving and implementing SIABs. To illustrate, in 1998, only 0.04% of passenger cars sold in the U.S. had head side air bag systems. In 2002, 22% of passenger cars were so equipped, and by 2009, under the voluntary commitment, manufacturers have projected that 100% of passenger vehicles will have head side air bag systems. Based on the vast knowledge that manufacturers have been able to gain in developing and implementing side air bag technologies, we are confident that manufacturers will be able to make the improvements to current systems that will enable the systems to meet the upgraded FMVSS No. 214 requirements adopted today.

12. International Harmonization

The Australian government was concerned that NHTSA's side impact proposal would forestall the outcome of deliberations of the International Harmonized Research Activities (IHRA) Side Impact Working Group (SIWG) regarding a side impact pole test procedure, and the dummies used in the test.[72] Our decisions today should not hamper the potential for global harmonization of side impact regulations.

Today's final rule is consistent with NHTSA's policy goal of harmonizing with non-U.S. safety requirements except to the extent needed to address safety problems here in the U.S. We noted in the NPRM that, worldwide, there are numerous countries that have side impact protection requirements or governmental or non-governmental side impact consumer information programs. While these side impact programs are similar to those of the U.S., the safety need addressed by those programs is different from the side impact safety need in the U.S., due in large part to fleet differences. NHTSA's underlying impetus to require side impact head protection is purely driven by the hundreds of lives that could be saved each year on U.S. roadways.

c. Aspects of the MDB Test Procedure

A number of commenters responded to the NPRM's proposed changes to the dynamic MDB side impact test in FMVSS No. 214. The NPRM did not propose changes to the MDB itself.

1. The Moving Deformable Barrier

IIHS, Advocates, CU and Public Citizen believed that the agency should change the design of the moving deformable barrier (MDB) used in the dynamic test to better reflect side impact risks in the current vehicle fleet. Advocates, CU and Public Citizen believed that an upgraded MDB should be used to test all vehicles up to 4,536 kg (10,000 lb). Advocates further stated:

[71] The February 14, 2005 final rule amended the certification requirements of 49 CFR part 567 to allow the use of pass-through certification so that it can be used not only for multistage vehicles based on chassis-cabs, but also for those based on other types of incomplete vehicles. Id.

[72] See Docket No. NHTSA–2004–17694–43.

''If NHTSA does not extend the proposed oblique pole test to rear seating areas in passenger vehicles, only a MDB-based test that actually results in head injury'is worthwhile in connection with adding a head injury measure and criterion to the current Standard No. 214 dynamic test.'' IIHS stated: ''If the agency does not take this opportunity to improve the barrier and if it decides to accept less biofidelic dummy options, it is difficult to see what benefits will accrue from the additional MDB tests that have been proposed.''

Agency response: NHTSA considers a redesign of the MDB as a longer term project beyond the scope of the present rulemaking. As noted in the NPRM (69 FR at 27992), initiatives to improve vehicle compatibility between passenger cars and LTVs in side crashes are likely to change the characteristics of striking vehicles in the future. Further, the marketplace is currently fluctuating. When future changes to the fleet have been identified, we can then determine how the agency's existing MDB should be modified to represent striking vehicles.

In response to Advocates, we do not agree that the absence of a pole test requirement for rear seat occupants necessitates the inclusion of a new MDB test that results in head injury. The SID–IIs in the rear seat of several of the vehicles in our test program measured high pelvic loading in FMVSS No. 214 MDB tests. Use of the dummy in the MDB tests and the information it provides about rear seat performance will result in improvements to rear seat occupant protection. Contrary to IIHS, we believe that the use of the ES–2re and SID–IIs dummies will add value to the current upgrade until such a time when a more thorough evaluation of the vehicle fleet and its characteristics can be modeled.

2. A Reasonable Balancing of the Test Burden

A. Arm Position

The NPRM proposed that the driver dummy arm position must be 40 degrees relative to torso, and that the arm for all dummies other than the driver dummy would have the arm in line with the torso. The Alliance commented that, to reduce test burdens and test variability, the arm position for the dummies should be set in the detent representing a 40 degree angle between the torso and the arm for all seating positions specified in the MDB test.

To reduce test burdens and variability, the agency agrees with the Alliance's recommendation to set the arm position for the dummy in the driver and front passenger seating positions in the detent representing a 40 degree angle between the torso and the arm. Under this change, the front seat dummies' arms will be angled in the same manner on both the right and left sides of the vehicle (i.e., the front seat dummy's arm nearest the door will be raised). This helps to reduce the test burden of the MDB test without decreasing crash protection, since it should be easier for manufacturers to design and better assure that a vehicle will meet the MDB requirements when impacted on either the right or left sides of the vehicle using data from an MDB test of only one side of the vehicle. Based upon pendulum impact tests to the dummy's thorax in which the arm was positioned down and another with a dummy without an arm, the maximum rib deflection occurred when the thorax was fully exposed. We believe that raising the arm of the dummy in the passenger seat test exposes the dummy's thorax in the same way achieved by a dummy without an arm, and that this change to the procedure will thus not degrade the robustness of the test.

B. Reducing the Number of Tests

To reduce unnecessary test burdens, today's final rule specifies that the MDB test will be conducted with an ES–2re in the front seat and a SID–IIs in the rear seat. We will not test using a SID–IIs dummy in the front seat, for the reasons provided earlier in this preamble in the section titled, ''Need for the 5th percentile dummy in the MDB test.'' In contrast, the ES–2re in the front seat will enhance safety at that seating position because of the dummy's enhanced abilities to measure HIC, thoracic and abdominal rib deflections, and pelvic loads. (The current FMVSS No. 214 side impact dummy (SID) does not measure HIC, rib deflections or have any type mechanism that assesses the risk of abdominal injury.)

However, we will not use an ES–2re in the rear seat. In our side impact test program, the ES–2re's responses in the rear seat passed the injury assessment reference values and were generally low. Further, while the ES–2re dummy has rib and abdominal measurement capabilities, the dummy was not able to detect the elevated injury measures found by the SID–IIs dummy in the rear seat MDB tests. Out of the nine tests conducted with the ES–2re rear passenger dummy, only one vehicle had an elevated abdominal force measurement in these tests, as reported in the NPRM (69 FR at 28010). The test was of the 2002 Chevrolet Impala, which has since been redesigned. The 2002 Impala test also resulted in high pelvic force and lower spine measurements when tested with the SID–IIs due to an intruding armrest. Because this final rule incorporates the SID–IIs dummy in the MDB rear seat test, countermeasures that will be installed to reduce the pelvic force and lower spine acceleration values of the SID–IIs in the rear seat should also address the performance of the rear seat in protecting mid-size adults. Use of the ES–2re in the rear seat of the MDB test would not result in an enhancement of occupant protection.

We do not believe that testing with only the SID–IIs dummy in the rear will degrade rear seat occupant protection to mid-size adult occupants. Our side NCAP program presently uses a mid-sized adult male dummy (the SID–H3) in the rear seating position in the MDB NCAP test, which complements the FMVSS No. 214 MDB test. We will make sure that any future revisions to the NCAP program will continue to complement the standard as upgraded today.

3. Other

NMEDA suggested that: ''Mobility vehicles having raised/altered roofs, lowered floors and vehicles equipped with extended travel seating systems be required to meet only the MDB test with the new mid-size male, and therefore be exempt from the MDB requirements for the small female test dummy, until such time as the NHTSA can determine if, in fact, the small female is the most accurate representation of the stature of mobility vehicle occupants.''

Agency response: We do not support this suggestion. We are not persuaded by NMEDA's theory that mobility vehicle occupants could be statistically larger than the rest of the population of motor vehicle occupants such that testing with the 5th percentile adult female dummy would not be beneficial. The SID–IIs 5th percentile adult female dummy represents a population that generally has lower impact tolerance levels than the 50th percentile adult male represented by the ES–2re. As explained in the next section of this preamble, our injury criteria for the SID–IIs was developed taking into account the occupant's age, bone mass and size. The injury tolerance levels for the SID–IIs were normalized to that for a 56-year-old, rather than that for a 45-year-old as done for the ES–2re. We have no basis for assuming that the SID–IIs will not be an appropriate test device for testing the rear seat of vehicles manufactured for mobility impaired occupants, and in fact have good reason to think that it will be.

As previously discussed, the agency has reduced the MDB requirements to only include the ES–2re dummy in the front seating position and the SID–IIs dummy in the rear. This reduces the test burden for vehicle manufacturers and should address NMEDA's concerns about the driver seating position.

d. Injury Criteria

In determining the suitability of a dummy for side impact testing, the agency considers the dummy's injury assessment capabilities relative to human body regions at risk in the real world crash environment. Crash data indicate that head, chest, abdomen and pelvic injuries are prevalent in side impacts. Accordingly, injury criteria were proposed for the ES–2re's head, thorax, abdomen, and pelvis.

The types of injury criteria proposed by NHTSA for the ES–2re were generally consistent with those developed by ECE/WP.29, by the European Union in its directive EU 96/27/EC, and by EuroNCAP for rating vehicles. Four of NHTSA's proposed injury criteria were specified in EU 96/27/EC for use with the EuroSID–1 dummy.[73] For the SID–IIs, injury criteria were proposed for the head, lower spine, and pelvis. The NPRM did not propose thoracic or abdominal deflection limits using the SID–IIsFRG.[74]

A technical report titled, ''Injury Criteria for Side Impact Dummies,'' May, 2004 (NHTSA docket number 17694) was made available to the public at *http://dmses.dot.gov/docimages/pdf89/285284_web.pdf*. The report was peer reviewed in accordance with the Office of Management and Budget's (OMB) June 15, 2005 information quality guidelines. Three peer reviewers from academia and industry, considered experts in the field of impact biomechanics and side impact, reviewed the document. The reviewers' comments and the agency's response thereto are available to the public through the DOT peer review website *http://www.dot.gov/peerrt.htm*.

1. Head Injury Criterion

NHTSA proposed to require a head injury criterion (HIC) limit of 1000 (measured in a 36 millisecond time interval). HIC_{36} 1000 relates to a 50 percent risk of head injury. The HIC_{36} 1000 criterion is used throughout the FMVSSs and provides a measure with which the agency and the industry have substantial experience. The HIC_{36} 1000 criterion is used in the optional pole test of FMVSS No. 201.

Comments on HIC proposal: The Alliance, Nissan, Ferrari, Maserati, and DaimlerChrysler supported the proposed HIC_{36} criterion of 1000. Advocates and Public Citizen supported a HIC_{36} criterion of 800, believing that the criterion would reduce the risk of AIS 3+ injury to approximately 35 percent, and that the limit is achievable by current vehicles. Dr. Albert King, a private individual, submitted a paper he co-authored that hypothesized that brain injury is governed by brain response and not the input acceleration. He suggested that the brain response to input translation and rotational head acceleration can be obtained through finite element models and injury potential estimated using strain and strain rates in the brain tissue.

Agency response: This final rule adopts the HIC_{36} criterion of 1000. The HIC_{36} limit of 1000 was selected to accord with the FMVSS No. 201 head protection standard. Vehicle manufacturers have experience with the 1000 HIC limit.

Significant research is needed before the potential for estimating brain injury risk using finite element brain models can be assessed. NHTSA did not propose to use a finite element brain model for head injury assessment and this final rule does not adopt such a method.

2. Thorax (Chest) Criteria

A. ES–2re

NHTSA proposed two criteria to measure thoracic injury when using the ES–2re: Chest deflection and resultant lower spine acceleration. Chest deflection has been shown to be the best predictor of thoracic injuries for side impact. The agency believed it to be a better injury risk measure than TTI(d) for the ES–2re dummy.[75] We added spinal acceleration criteria because we believed that spinal accelerations might detect severe loading conditions that are undetected by the unidirectional deflection measurements. Lower spine acceleration may not have a causal relationship with thoracic injury but is a good indicator of the overall loading to the thorax. The agency believed that in concert, the two thoracic criteria would enhance injury assessment in a vehicle side crash test, and result in reduced chest injuries as compared to the use of TTI(d) in current FMVSS No. 214.

NHTSA selected the two criteria based upon a series of 42 side impact sled tests using fully instrumented post mortem human subjects (PMHS) and 16 sled tests using the ES–2re, conducted at the Medical College of Wisconsin (MCW). NHTSA conducted the analysis using logistic regression with injury outcome in the PMHS sled tests as the response, and ES–2re dummy measured physical parameters (maximum rib deflections, TTI, maximum spinal accelerations) in similar sled tests as the covariates. The subjects' anthropometric data such as age, gender, and mass were also included as covariates since the agency believed that they might influence injury outcome.[76] This method of analysis provided injury criteria that could directly be applied to the ES–2re dummy.

i. Chest Deflection

Chest deflection was proposed to be not greater than 42 mm for any rib (reflecting an approximate 50 percent risk of an AIS 3+ injury). The NPRM sought comment on an alternative criterion within the range of 35 to 44 mm (1.38 to 1.73 in). The 44 mm (1.73 in) value corresponded to a 50 percent risk of serious injury for a 45-year-old occupant.[77] The agency determined upon reanalyzing a data set that was used when NHTSA undertook the 1990 rulemaking adopting the MDB test into FMVSS No. 214 that the current TTI(d) of 85 g's corresponds approximately to a 50 percent risk of AIS 3+ injury. Thus, NHTSA tentatively concluded that a rib deflection limit of 44 mm (1.73 in) for the ES–2re could be acceptable on the basis that it was approximately equivalent to the risk of injury

[73] NHTSA decided not to use the chest viscous injury criteria, $V*C \leq 1.0$, because we did not find the V*C criterion to be repeatable and reproducible in our research.

[74] The agency did not propose a limit on deflections because, in pendulum tests, the FRG design reduced the SID–IIs's dummy's deflection measurement capability when the ribs were struck in angled pendulum impacts. NHTSA wanted to obtain more information about the FRG's effect on rib deflections before proposing deflection criteria in FMVSS No. 214.

[75] TTI(d), a chest acceleration-based criteria, when combined with anthropometric data, was developed by NHTSA (Eppinger, R. H., Marcus, J. H., Morgan, R. M., (1984), ''Development of Dummy and Injury Index for NHTSA's Thoracic Side Impact Protection Research Program,'' SAE Paper No. 840885, Government/Industry Meeting and Exposition, Washington, D.C.; Morgan, R. M., Marcus, J. H., Eppinger, R. H., (1986), ''Side Impact—The Biofidelity of NHTSA's Proposed ATD and Efficacy of TTI,'' SAE Paper No. 861877, 30th Stapp Car Crash Conference) and is included in the FMVSS No. 214 side impact protection standard.

[76] Kuppa, S., Eppinger, R., McKoy, F., Nguyen, T., Pintar, F., Yoganandan, Y., ''Development of Side Impact Thoracic Injury Criteria and their Application to the Modified ES–2 Dummy with Rib Extensions (ES–2re),'' Stapp Car Crash Journal, Vol. 47, October, 2003.

[77] Logistic regression analysis using cadaver injury and anthropometry information along with the ES–2 measurements indicate that the age of the subject at the time of death had a significant influence on the injury outcome ($p<0.05$). *Id.*

addressed by the current TTI(d) requirement in FMVSS No. 214.[78]

Comments on the ES–2re chest deflection: In an August 16, 2005 comment, the Alliance noted that the injury risk curve from which NHTSA derived its proposed chest deflection limit of 44 mm was based on the MCW studies that analyzed the responses of PMHS and the ES–2re. The Alliance believed that an injury risk curve developed for the ES–2 dummy should be used instead, particularly if the agency agrees with the Alliance's suggestion to use the ES–2 dummy. Moreover, the commenter stated, NHTSA proposed a chest deflection requirement of 42 mm to harmonize with the EU regulation for the EuroSID–1. The Alliance stated that the ES–2 dummy rib deflections have been observed to be approximately 25 to 100 percent larger than those for the EuroSID–1 under the same test conditions. The commenter stated:

> Given the difference in deflections noted between the EuroSID–1 and ES–2 dummies, the Alliance believes that the injury limit for thoracic deflection in the ES–2 should be at least 25% greater than the limit derived from the risk curve if the EuroSID–1 is used. Therefore, the value of 42 mm in the European regulation derived with EuroSID–1 would be multiplied by 1.25, which leads to a value of 53 mm for the deflection limit proposed by the Alliance.

Advocates and Public Citizen believed that even the 35 mm deflection limit at the low end of the proposed range was too high to protect the elderly population. Advocates believed that the proposal ''will disproportionately take the lives of, and inflict much more serious injuries on, occupants 65 years of age and older'' and stated that it did not support any value within the range proposed.

Agency response: This final rule adopts a chest deflection threshold of 44 mm, which corresponds to a 50 percent risk of AIS 3+ injury for a 45-year-old. We do not agree with the Alliance's suggestion that, because the ES–2 dummy records higher rib defections than the EuroSID–1, the chest deflection limit for this final rule should be 53 mm.

Many researchers have shown that the ES–2 dummy records higher rib deflections than the EuroSID–1. Samaha *et al.* reported higher rib deflections with the ES–2 dummy than with the EuroSID–1 dummy in identical side impact vehicle crash tests conducted in accordance with the EU 96/EC/27 side impact procedure.[79] When developing the NPRM, we determined that the thorax of the ES–2 was so different from that of the predecessor EuroSID–1 dummy that previously-generated EuroSID–1 data should not be used in analyzing the ES–2 and its associated thoracic injury criteria. Consequently, NHTSA stated in the NPRM that, in developing the injury criteria for the ES–2re, we would use risk curves and other information resulting from our research conducted with the ES–2re. (69 FR at 28002)

That research included paired sled tests at the Medical College of Wisconsin with PMHS and the ES–2re dummy in various impact wall configurations. ''Injury Criteria for Side Impact Dummies,'' *supra.* The analysis of the test data indicated a 50 percent risk of thoracic injury at 44 mm of maximum thoracic rib deflection. We viewed favorably that a rib deflection limit of approximately 44 mm for the ES–2re would be harmonized with the 42 mm limit in the EU regulation, in that the IARV of 42 mm in the EU regulation corresponded to a 50 percent risk of nine rib fractures, which was associated with serious injury (internal organ injuries and flail chest). (69 FR at 28002, footnote 33.) That is, the chest deflection limits of the two regulations generally correspond to equivalent limits on the risk of serious chest injury, which could promote the development of similar countermeasures.

With regard to the comment from Advocates and Public Citizen, the agency acknowledges that the elderly and small size occupants generally have lower impact tolerance levels than younger, larger occupants. For this reason, the injury tolerance levels for the 5th percentile female were normalized to that for a 56-year-old, rather than that for a 45-year-old as done for the 50th percentile male dummy. These injury tolerance levels are reasonable, balancing to the extent possible the dual goals of practicability and optimum safety performance. The agency thus believes that a final rule that uses both the 5th percentile adult female dummy and the 50th percentile male dummy affords practicable protection to the elderly as well as to a more generalized population.

ii. ES–2re Lower Spine Acceleration

Resultant lower spine acceleration was proposed to be not greater than 82 g (reflecting a 50 percent risk of an AIS 3+ injury). The upper and lower spine of the ES–2re is instrumented with tri-axial accelerometers (x, y, and z direction corresponding to anterior-posterior, lateral medial, and inferior-superior). In both oblique pole and MDB side vehicle crashes, loading can be in various directions due to the complexities of the intruding surfaces. Therefore, NHTSA believed that to account for overall loading, resultant accelerations should be measured.

Comments on ES–2re lower spine acceleration: The Alliance did not agree with the use of the lower spine acceleration as a supplementary criterion for thoracic injury criterion. The Alliance believed that the criterion is a poor predictor of injury outcome. The Alliance stated that ''thoracic deflection is a direct measure of injury potential by itself and that the addition of acceleration will only unnecessarily restrict designs using an unproven and poorly correlated parameter.'' Further, the Alliance suggested that the lower spine acceleration criterion might be unnecessary for the ES–2re, in that the dummy's rib deflection readings alone should detect injurious loading of the thorax.

Agency response: We have determined that it is unnecessary to limit lower spine acceleration in the pole and MDB tests of the ES–2re dummy. Accordingly, this final rule does not adopt the lower spine acceleration limit in this rulemaking for the ES–2re. In the oblique pole tests conducted in our 214 fleet testing program, the ES–2re's lower spine acceleration readings were relatively consistent with the dummy's rib deflection readings. Eleven tests showed elevated rib deflections. Of these eleven, five also had elevated lower spine acceleration. The lower spine acceleration of the ES–2re was elevated (75 g) in one vehicle (the Ford Expedition) when the dummy's rib deflection was low (26 mm), but the lower spine response could have been elevated due to high abdominal loads (the ES–2 recorded a 6,973 N abdominal force in that test). Because the lower spine acceleration measurements fairly tracked the ES–2re's rib deflections, we conclude that, in the oblique pole and MDB tests, the lower spine acceleration criterion is unnecessary for the ES–2re.[80] The dummy's rib deflection

[78] NHTSA reanalyzed the Eppinger data set that was used in the 1990 MDB rulemaking. Kuppa *et al.*, ''Development of Side Impact Thoracic Injury Criteria and their Application to the Modified ES–2 Dummy with Rib Extensions (ES–2re),'' *id.*

[79] Samaha, R., Maltese, M., Bolte, J., (2001), ''Evaluation of the ES–2 Dummy in Representative Side Impacts,'' Seventeenth International Technical Conference on the Enhanced Safety of Vehicles, Paper No. 486, National Highway Traffic Safety Administration, Washington, DC.

[80] In its comment, Honda noted that the NPRM May 17, 2004 specified that acceleration data from

Continued

measurements alone will detect injurious loading of the thorax.

Although we are not adopting the lower spine acceleration limit as suggested by the Alliance, we do not agree with the Alliance's suggestion that the addition of acceleration will unnecessarily restrict designs. The Alliance submitted no data or any other information explaining or substantiating this comment. Further, we have not seen inconsistencies between the rib deflection and lower spine acceleration criteria that support that contention.

B. SID–IIs Lower Spine Acceleration

For the SID–IIs dummy, the agency proposed a limit of 82 g on the resultant lower spine acceleration, which is a measure of loading severity to the thorax. In vehicle crashes, loading can be in various directions. Therefore, NHTSA believed that to account for overall loading, resultant accelerations should be considered rather than lateral acceleration alone. The agency recognized that dummy-measured accelerations for the level of loading severities experienced in vehicle crashes might not have a causal relationship to injury outcome. However, the agency believed that they are good indicators of thoracic injury in cadaver testing and of overall loading to the dummy thorax.

NHTSA selected the 82 g resultant lower spine acceleration based upon a Receiver Operator Characteristic curve (ROC) developed using the data from the series of MCW PMHS sled tests and the sled tests conducted with the SID–IIs dummy under impact conditions identical to those of the MCW tests. NHTSA estimated the thoracic criteria that were associated with a 50th percent risk of AIS 3+ injury in the PMHS. As noted above, accelerations measured in a pole and MDB crash test soundly indicate overall loading to the dummy thorax, which, in turn, can be used to indicate when the thorax has been exposed to overload conditions in a crash. However, to minimize instances where accelerations above the threshold value results in no serious injury, the agency set the maximum lower spine acceleration at 82 g. (See ''Injury Criteria for Side Impact Dummies,'' *id.*) The agency also believed that the age of the subject involved in a side impact affects injury outcome. Subject age in the MCW sled test data was found to have significant influence on injury outcome and so was included in the injury models. (NHTSA normalized the risk curve to the average occupant age of 56 years.)

Comments on SID–IIs lower spine acceleration: The Alliance disagreed with the proposal to use a deflection-based criterion for the ES–2re and an acceleration-based criterion for the small female dummy.[81] The Alliance believed that limiting accelerations would not assure that thoracic injury will not occur, and that chest deflection is the best predictor of injury. The Alliance stated: ''It is possible to have balanced restraint loads, as indicated by low thoracic spine accelerations, but to have large, injurious rib deflections. Limits must be placed on thoracic and abdominal rib deflections to assure that the risks of thoracic and abdominal injuries are at acceptable levels for the simulated accident condition.''

IIHS likewise strongly supported the use of deflection measures.

Advocates took ''no specific position'' on the proposed limit of 82 g but believed that the value might be excessive with regard to older vehicle occupants. The commenter agreed with the NPRM that resultant accelerations should be considered rather than lateral acceleration alone.

Agency response: NHTSA agrees with the Alliance and IIHS that the SID–IIs thoracic and abdominal rib deflections are a critical part of the dummy. However, adopting limits on the rib deflections of the SID–IIs would be outside the scope of this rulemaking and thus is not a part of this final rule. Nonetheless, as stated earlier in this preamble, we may undertake future rulemaking to propose to limit the thoracic and abdominal rib deflections measured by the SID–IIs in the FMVSS No. 214 MDB and pole tests.

Since we are not adopting in this final rule thoracic and abdominal deflections for the SID–IIs, a criterion for lower spine acceleration is especially important. The criterion can detect injurious loading conditions to the abdomen and lower thorax. Test data from the agency's 214 fleet testing program indicate that 6 of the 10 vehicle tests with the SID–IIs resulted in rib deflection measurements exceeding a limit of 38 mm for the thoracic rib (which corresponds to a 50 percent risk of AIS 3+ injury), and/or a limit of 45 mm for the abdominal rib (the 45 mm limit is used by IIHS in its consumer information program). In all of these, the lower spine acceleration values were also elevated (exceeding 82 g or within 80 percent of 82 g (*i.e.*, 66 g)). The 6 tests were of the: 2005 Toyota Corolla, 2005 Saturn Ion, 2005 Ford Five Hundred, 2004/05 Toyota Sienna, 2005 Chevy Colorado 4x2 extended cab, and the 2005 Ford Expedition. Likewise, the lower spine acceleration criterion identified elevated loading conditions in the test of the 2005 Honda CRV. In that test, the SID–IIs abdominal rib deflection was 36 mm (within 80 percent of 45 mm), and the lower spine was 68 g (within 80 percent of 82 g).

Thus, the data show that the lower spine acceleration readings were generally consistent with the SID–IIs's rib deflections. The criterion was generally able to identify tests in which a vehicle was unable to keep rib deflections from exceeding threshold levels. The lower spine acceleration criterion meets the need for a good indicator of thoracic injury and of overall loading to the dummy thorax. The lower spine acceleration is particularly needed in the absence of a rib deflection criterion for the SID–IIs, or any other mechanism that will ensure that vehicles are best designed with abdominal and thoracic protection for the small occupant in mind. In the future, if NHTSA were to adopt limits on the thoracic and abdominal rib deflections measured by the SID–IIs in the FMVSS No. 214 crash tests, the agency would consider as part of that rulemaking the need for limiting both lower spine acceleration and rib deflections.

Resultant accelerations will be measured rather than lateral acceleration alone, for the reasons provided in the NPRM. In response to Advocates, the injury tolerance level for the 5th percentile female were normalized to that for a 56 year old, rather than that for a 45 year old as done for the 50th percentile male dummy. The 82 g injury tolerance level is reasonable, balancing to the extent possible the dual goals of practicability and optimum safety performance.

the accelerometers on the ES–2re lower spine would be filtered at channel frequency class of 1000 Hz (proposed S11.5(b)(3), 69 FR at 28027). Honda believed that SAE filter channel class 180 should be used instead, and pointed out that NHTSA used SAE filter channel class 180 in developing the injury criteria for the side impact dummies. The commenter is correct that S11.5(b)(3) of the NPRM should have specified SAE filter class 180. NHTSA's intent to adopt SAE filter class 180 is shown by the document referenced by Honda, and by the December 14, 2006 final rule adopting the ES–2re dummy into 49 CFR part 572, which specifies SAE filter class 180 in 572.189(4). However, because we are not adopting the lower spine acceleration injury assessment limit, the specification for the lower spine filter class is not necessary and we have removed the filter class specification from FMVSS No. 214. In addition, this final rule specifies that the dummy's rib deflection data are filtered at channel frequency class 600 Hz, not 180 Hz, in accordance with SAE Recommended Practice J211, ''Instrumentation For Impact Test, Part 1, Electronic Instrumentation.''

[81] The Alliance stated that it supported use of the SID–IIs dummy for research purposes.

3. ES–2re Abdominal Criterion

The ES–2re dummy offers abdominal injury assessment capability, a feature that is not present in the SID dummy. The agency proposed an abdominal injury criterion of 2,500 Newtons (N) (562 pounds). The agency sought comment on an alternative abdominal injury criterion within the range of 2,400–2,800 N (540–629 pounds). This range corresponds to an approximate 30–50 percent risk of AIS 3+ injury.

The proposed abdominal injury criterion was developed using cadaver drop test data from Walfisch, *et al.* (1980).[82] Analysis of this data indicated that applied force was the best predictor of abdominal injury, and an applied force of 2,500 N (562 pounds) corresponds to a 33 percent risk of AIS 3+ injury. The MCW sled test data indicated that the applied abdominal force on the cadavers was approximately equal to the total abdominal force in the ES–2re dummy under similar test conditions.

Comments on abdomen proposal: Ferrari supported the proposed abdominal force limit of 2,500 N because it was consistent with harmonization. The Alliance stated that the 2,500 N limit appears to be reasonable. The Alliance also stated that there were inconsistencies in the calculations of total abdominal force in the NPRM. In some cases the abdominal loading was calculated through instantaneous summation of the individual load cells, while in other cases the summation of individual peak values was utilized. The Alliance stated that it believed that an instantaneous summation of the abdominal load cells is the correct method to determine the total abdominal force in the ES–2 dummy.

Agency response: This final rule adopts an abdominal force limit of 2,500 N for the reasons provided in the proposal. In response to the Alliance, the abdominal force has and will be calculated as the instantaneous summation of the abdominal load cell measurements.

4. Pelvic Criterion

A. ES–2re

NHTSA proposed an ES–2re pelvic force limit of not greater than 6,000 N (1,349 pounds) (25 percent risk of AIS 3+ injury). The ES–2re has two pelvic measurement capabilities. First, the ES–2re has instrumentation to measure pelvic acceleration, as does the SID dummy. However, unlike the SID, the ES–2re is also capable of measuring the force (load) at the pubic symphysis, which is the region of the pelvis where the majority of injuries occur. A field analysis of 219 occupants in side impact crashes by Guillemot, et al. (1998) showed that the most common injury to the pelvis was fracture of the pubic rami (pelvic ring disruption).[83] Pubic rami fractures are the first to occur because it is the weak link in the pelvis.

The NPRM proposed to limit only pubic symphysis force. The agency did not propose an acceleration-based criterion because the agency believed that an injury threshold limit on pelvic acceleration is dependent on the impact location and the type of loading (distributed versus concentrated). Therefore, the agency did not believe that pelvic acceleration is as good a predictor of pelvic fracture as force. The scientific literature has documented that force alone is a good predictor of pelvic injury.[84] Further, the pubic symphysis load injury criterion has been applied in the European side impact regulation EU 96/27/EC as well as the EuroNCAP Program, so there is experience with this measure and some demonstration of its usefulness. The criterion in those programs is 6,000 N (1,349 lb).

Comments on ES–2re pelvis proposal: The Alliance did not agree with the NPRM that the ES–2re dummy has provisions for instrumentation that can assess the potential for acetabulum and public symphysis injuries by way of load cell measurements. In its August 2005 comment, the Alliance stated that although vehicles can meet a 6,000 N criterion, it is concerned that no experiments have been published documenting what the pubic symphysis load was at time of fracture, or as a function of external load for a human subject. The Alliance also stated that there are no data on the relationship of pubic symphysis load with impact velocity. The commenter recommended further study of the issue before a criterion is adopted.

Ferrari agreed with the pelvic force limit of 6,000 N, while Advocates believed that the proposed pelvic force limit of 6,000 N is too high to protect the elderly.

Agency response: NHTSA used the Bouquet pendulum test data to relate the applied pelvic force to cadavers to the pubic symphysis force of the EuroSID–1 dummy for identical test conditions. The impact surface in these tests loaded the iliac crest as well as the trochanter.[85] The impactor mass varied between 12 kg to 16 kg and the impactor speed from 6 m/s to 13.7 m/s. Since the EuroSID–1 pelvis is similar to that of the ES–2re, the similar relationship would apply to the ES–2re. For AIS 2+ injured subjects, the dummy pubic force corresponds to 0.455 times applied pelvic force to the cadaver.

The reanalysis of the Bouquet data after normalizing for the weight of the subject as well as the confirmation of the injury risk curves using the Zhu and Cavanaugh test data suggests that NHTSA's injury risk curves and applied injury threshold for AIS 3+ pelvic fractures are reasonable. While the relationship between the ES–2 pubic loads and the cadaver applied force are dependent on the loading condition, similar scaling relationships have been used successfully for years for the EuroSID–I in the EU regulation.

B. SID–IIs

For the SID–IIs dummy, the pelvic injury criterion was developed from an analysis of the same cadaver impact data that was used for the development of the ES–2re pelvic injury criterion. The measured loads in these impact tests were distributed over a broad area of the pelvis that included the iliac crest and the greater trochanter. The measured applied pelvic force to the cadaveric subjects was mass-scaled to represent the applied forces on a 5th percentile female. Under similar impact conditions, the scaled applied pelvic force on the cadaveric subjects was assumed to be equal to the sum of the iliac and acetabular forces measured on the SID–IIs dummy.[86] Therefore, the pelvic injury risk curves developed for the SID–IIs dummy were based on the maximum of the sum of the measured acetabular and iliac force. The proposed 5,100 N force level for the SID–IIs corresponded approximately to a 25 percent risk of AIS 2+ pelvic fracture.[87]

[82] Walfisch, G., Fayon, C., Terriere, J., *et al.,* ''Designing of a Dummy's Abdomen for Detecting Injuries in Side Impact Collisions, 5th International IRCOBI Conference, 1980.

[83] Guillemot H., Besnault B., Robin, S., *et al.*, ''Pelvic Injuries In Side Impact Collisions: A Field Accident Analysis And Dynamic Tests On Isolated Pelvic Bones,'' Proceedings of the 16th ESV Conference, Windsor (1998).

[84] Bouquet, *et al.* (1998) performed cadaver pendulum impact tests and showed that the pubic symphysis load cell in the EuroSID–1 dummy was a good predictor of pelvic fracture. *See* Bouquet, R, Ramet, M, Bermond, F, Caire, Y, Talantikite, Y, Robin, S, Voiglio, E, ''Pelvis Human Response to Lateral Impact,'' Proceedings of the 16th Enhanced Safety of Vehicles (ESV) Conference (1998).

[85] The bony protrusion at the top of the femoral shaft opposite the ball of the hip joint.

[86] IIHS used the same assumption when developing performance standards for its consumer ratings program. See Arbalaez, R. A., *et al.*, ''Comparison of the EuroSID–2 and SID–IIs in Vehicle Side Impact Tests with the IIHS Barrier,'' 46th Stapp Car Crash Journal (2002).

[87] In the IIHS side impact consumer ratings program, 5,100 N is the injury parameter cutoff

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Comments on SID–IIs pelvis proposal: The Alliance commented that NHTSA's assumption that the normalized applied pelvic force in the cadaver tests was equal to the sum of the forces in iliac wing and acetabulum was not based on test data. In a September 2, 2005 comment, the Alliance submitted component test data showing the distribution of forces between the iliac and acetabulum measured by PMHS and the SID–IIs. The commenter disagreed with the normalization of pelvic responses by the mass of the subject because, the commenter stated, the Alliance's data suggest only a weak relationship between pelvic mass and geometry with the overall subject mass. The commenter believed that the sum of the internal forces (acetabulum plus sacro-iliac) is approximately 75 percent of the applied external force on the SID–IIs dummy. Based on this information, the Alliance stated that ''Even though the injury risk curves and associated relationship between PMHS and dummy data would have to [be] re-calculated based on non-normalized data, an initial IARV for 25% risk of AIS 3+ pelvic injury could be set at 8.55kN (0.75*11.4kN) for maximum combined acetabulum and iliac loads.''

The Alliance also stated that there were inconsistencies in the calculations of combined pelvic force in the NPRM. In some cases the combined pelvis loading was calculated through instantaneous summation of the iliac and acetabulum load cells, while in other cases the summation of individual peak values was utilized. The Alliance stated that it believed that an instantaneous summation of the iliac and acetabulum load cells is the correct method to determine the combined pelvic force for the SID–IIs.

Advocates said that older occupants suffering pelvic fracture are at a much higher risk of death. Advocates believed that vehicles equipped with side thorax bags could be able to meet a lower value. The commenter agreed with NHTSA that resultant accelerations should be considered rather than lateral acceleration alone.

Agency response: The Bouquet pelvic impact test data indicated that for the same test conditions, the applied force on a lighter subject that results in injury was lower than that on a heavier subject. The agency continues to believe that such data should be normalized to a representative anthropometric subject. The normalizing procedure adopted was that of mass scaling, which has been applied by other researchers as well.[88]

To obtain the injury risk curve for a small female, the agency normalized the pelvic force data from the Bouquet pelvic impact tests to that of a small female weighing 48 kg (105 lb), as indicated in the technical document, ''Injury Criteria for Side Impact Dummies,'' *supra*. In addition, the risk curve was adjusted to that for a 56 year old. At the time of developing the risk curve, there was no data available to relate the applied cadaver pelvic force in the Bouquet tests to equivalent acetabular and iliac force measured in the SID–IIs. Therefore, it was assumed that the applied cadaver pelvic force is equal to the sum of acetabular and iliac force in the SID–IIs.

NHTSA analyzed the SID–IIs data submitted by the Alliance on September 2, 2005 in conjunction with the relevant cadaver tests from Bouquet. We believe that the submitted data suggested that the sum of acetabular and iliac force of the SID–IIs is approximately 1.21 times that of the applied cadaver force under similar impact conditions of the Bouquet test setup. Accordingly, rather than the proposed pelvic force limit of 5,100 N, we have adopted a pelvic force IARV limit of 5,525 N, which corresponds to a 25% risk of AIS 2+ injury using also a factor for reduced bone strength in older women (0.88). We note that IIHS considered a 5,525 N pelvic force to be in the middle of the acceptable range for the IIHS consumer ratings program.

The combined pelvic force is calculated as an instantaneous summation of the measurements from the iliac and acetabulum load cells.

In response to Advocates, the 5,525 N sum of acetabular and iliac force corresponds to the pelvic injury tolerance for a 56 year old 5th percentile female. This tolerance level thus accounts for the age of the occupant, and provides practicable protection to the elderly occupant.

For convenience of the reader, the injury criteria adopted by this final rule are summarized below in Table 11:

TABLE 11.—FINAL RULE INJURY CRITERIA

	HIC_{36}	Chest deflection (mm)	Lower spine (g)	Abdominal force (N)	Pelvic force (N)
ES–2re	1,000	44	N/A	2,500	6,000
SID–IIs	1,000	N/A	82	N/A	5,525

e. Lead Time

1. Pole Test

The agency proposed a phase-in period for the new vehicle-to-pole test based on crash test data (see, e.g., Appendix C of this preamble), the technologies that could be used to meet the proposed testing requirements, and the relatively low percentage of the fleet that had side air bags that were capable of meeting the proposed requirements. The NPRM proposed to include provisions under which manufacturers can earn credits towards meeting the applicable phase-in percentages if they meet the new requirements ahead of schedule. The NPRM proposed the following phase-in schedule:

—During the production year beginning four years after publication of a final rule, 20 percent of each manufacturer's light vehicles manufactured during the production year must comply with the requirements of the oblique pole test;
—During the production year beginning five years after publication of a final rule, 50 percent of each manufacturer's light vehicles manufactured during that production year must comply with the requirements;
—All vehicles manufactured on or after September 1 six years after publication of a final rule must comply with the requirements.

In addition, we proposed a separate alternative to address the special problems faced by limited line manufacturers, alterers, and multistage manufacturers in complying with the

value for the ''Good-Acceptable'' range for the combined acetabulum and ilium force values. *http://www.highwaysafety.org/vehicle_ratings/measures_side.pdf*

[88] Zhu, J., Cavanaugh, J., King, A., ''Pelvic Biomechanical Response and Padding Benefits in Side Impact Based on a Cadaveric Test Series,'' SAE Paper No. 933128, 37th Stapp Car Crash Conference, 1993.

phase-in. NHTSA accordingly proposed to permit these manufacturers the option of achieving full compliance when the phase-in is completed.

Comments received: The Alliance supported the proposed phase-in schedule for the oblique pole test. Air bag supplier TRW believed that the technology exists to meet the proposed performance requirements within the proposed timeframes and stated that it was prepared to respond to the needs of the manufacturers. Advocates, Consumers Union, and Public Citizen supported a three-year phase-in but recommended that the phase-in period begin two years after publication of a final rule. Advocates stated that if the agency were to adopt an earlier starting year than what had been proposed, it would support a more protracted phase-in of four years for the new pole test and a two-year phase in of an upgraded MDB test. These commenters believed that the earlier phase-in period is supported by agency test results that the commenters believed showed that the majority of vehicles could comply relatively quickly with the new requirements.

RVIA supported the agency's proposal to allow alterers and multistage manufacturers to certify compliance at the end of the phase-in period. However, both RVIA and NTEA stated that chassis manufacturers do often not provide information until the last possible moment before the compliance date. Therefore, these commenters requested that we allow multistage manufacturers and alterers an additional year for compliance certification.

Maserati and Ferrari supported the proposal to allow small volume vehicle manufacturers until the end of the phase-in period before having to certify for compliance.

Agency response: After reviewing the comments to the NPRM, the results of the 214 fleet testing program, and production plans which show installation of side air bags in vehicles ahead of the proposed schedule, we have determined that it would be practicable to provide a 2-year lead time instead of the 4-year lead time proposed in the NPRM leading up to the beginning of the phased-in pole test requirements. Compared to the original schedule, this would accelerate the benefits expected to be provided by side air bag systems and other countermeasures by phasing-in the requirements starting with 20 percent of model year (MY) 2010 vehicles. Comments from air bag suppliers indicate that the schedule is practicable.

As explained in the FRIA, the phase-in schedule and percentages of this final rule facilitate the installation of side impact air bags and other safety countermeasures in light vehicles as quickly as possible, while the allowance of advanced credits provides manufacturers a way of allocating their resources in an efficient manner to meet the schedule. At the same time, many of the vehicles tested by the agency using the ES–2re and SID–IIs dummies produced dummy readings that exceeded the new pole test performance requirements. This confirms our belief that vehicle manufacturers are at different stages with respect to designing side impact air bags, and also face different constraints and challenges (e.g., differences in the technological advances incorporated in their current air bag systems, in engineering resources, and in the number and type of vehicles in which air bags need to be redesigned). Further, manufacturers' product plans also show that they are at different stages with regard to planning for installation of side impact air bags, particularly thorax bags in light trucks.

Our rationale for the lead time and phase-in is discussed in detail in the FRIA for this final rule, and is summarized below.

- The agency analyzed the product plans submitted by seven vehicle manufacturers, whose combined production accounts for approximately 90 percent of all light vehicle sales, responding to an NHTSA request for planned side air bag installations and projected sales through model year (MY) 2011. The data show that 90 percent of all MY 2010 light vehicles will be equipped with side air bags protecting the head, and 72 percent will be equipped with side air bags protecting the thorax. The percentage of side air bags protecting the head is fairly uniform between the manufacturers; however, there are large differences between manufacturers in the percentage of thorax bags being planned, particularly for light trucks.
- The agency's 214 fleet testing program indicated that the majority of currently available head side air bags would meet the head protection requirement of this final rule's pole test (about 80 percent of tested vehicles equipped with head air bags passed the pole test). However, of the vehicles tested equipped with thorax bags, only 56 percent met the chest requirement in the pole test. One large truck (GVWR greater than 8,500 lb) that was tested also exceeded the injury criteria, indicating that structural changes may be needed.
- From our testing, it appears that the pole test data show that side air bags installed in most passenger cars and small and medium size light trucks (including SUVs and minivans) may not need extensive modifications. While some of the window curtains and thorax bags we tested were not wide enough to provide the protection desired in the oblique impacts when tested with the SID–IIs 5th percentile female dummy, we believe that a two-year lead time is reasonable to redesign the head and thorax bags. It also appeared that extensive vehicle structural modifications were not necessary for the passenger cars and small and medium size light trucks. On the other hand, we estimate that it will take longer than two years to add a thorax bag to a vehicle model that has not had one previously.
- For large light trucks, the test results indicate that structural changes may be needed. This is why we have provided a longer lead time for vehicles with a GVWR greater than 8,500 lb. Based on our experience, if structural changes are needed, the modification could be done within 3–4 years.

The agency analyzed the above factors in determining the lead time and phase-in requirements of this final rule. The 20 percent level at the two-year mark reflects the manufacturers' production plans for the next two years: for vehicles that already have side air bags but whose bags do not comply with the pole test, two years provides sufficient time for manufacturers to make bags wider and potentially make other changes to pass the test, while it takes longer than two years to add one to a vehicle that has not had one previously. The 50 percent phase-in percentage with a three-year lead time could result in one manufacturer introducing side thorax air bags ahead of its plans, but we believe it would be practicable to introduce thorax bags with 3 years of lead time, particularly with the use of advanced credits. The 75 percent phase-in percentage was adopted to elongate the phase-in schedule one year longer than proposed, to provide vehicle manufacturers the flexibility of a four-year phase-in schedule to incorporate side structure and restraint system modifications into their production cycles. Most vehicle lines would likely experience some level of redesign over the next three to four years. The additional phase-in year provides more opportunity to incorporate side impact protection design changes during the course of each manufacturer's normal production cycle.

In addition, as discussed in section IV.b.10 of this preamble, ''Vehicle exclusions,'' this final rule provides more lead time to meet the pole test requirements to manufacturers of vehicles with a GVWR greater than

3,855 kg (8,500 lb) than proposed in the NPRM. These vehicles need more lead time because they have never been regulated under FMVSS No. 214's dynamic requirements and are not subject to the industry's voluntary commitment to install side air bags. Because these vehicles may need more redesign of the vehicle side structure, interior trim, and/or optimization of dynamically deploying head/side protection systems than light vehicles, this final rule does not subject these vehicles to the pole test requirements until September 1, 2013.

In response to the RVIA and NTEA, NHTSA has issued a final rule pertaining to certification requirements for vehicles built in two or more stages and altered vehicles.[89] In relevant part, the multi-stage certification final rule amended 49 CFR 571.8, *Effective Date,* to add a new subparagraph (b) providing as follows:

Vehicles built in two or more stages and altered vehicles. Unless Congress directs or the agency expressly determines that this paragraph does not apply, the date for manufacturer certification of compliance with any standard, or amendment to a standard, that is issued on or after September 1, 2006 is, insofar as its application to intermediate and final-stage manufacturers and alterers is concerned, one year after the last applicable date for manufacturer certification of compliance. Nothing in this provision shall be construed as prohibiting earlier compliance with the standard or amendment or as precluding NHTSA from extending a compliance effective date for intermediate and final-stage manufacturers and alterers by more than one year.

Applying the above provision of the February 14, 2005 final rule to this rulemaking, we have provided final-stage manufacturers and alterers an additional year after completion of the phase-in to certify compliance of their vehicles with the pole test requirements. The manufacturers may voluntarily certify compliance with the standard prior to this date.

For convenience of the reader, the phase-in schedule (with advanced credits) adopted by this final rule is summarized below and in Table 12:

—20 percent of a vehicle manufacturer's ''light'' vehicles (GVWR less than or equal to 3,855 kg (8,500 lb)) manufactured during the period from September 1, 2009 to August 31, 2010 will be required to comply with the standard; [90]

—50 percent of light vehicles manufactured during the period from September 1, 2010 to August 31, 2011;

—75 percent of light vehicles manufactured during the period from September 1, 2011 to August 31, 2012;

—All light vehicles manufactured on or after September 1, 2012, including those produced by limited line and small volume manufacturers, without use of credits;

—All vehicles with a GVWR greater than 3,855 kg (8,500 lb) manufactured on or after September 1, 2013 and all vehicles produced by alterers and multistage manufacturers, without use of credits.

TABLE 12.—FINAL RULE PHASE-IN SCHEDULE

Production period	Percent of each manufacturer's vehicles that must comply during the production period [91]
September 1, 2009 to August 31, 2010	20 percent (excluding vehicles GVWR >8,500 lb).
September 1, 2010 to August 31, 2011	50 percent of vehicles (excluding vehicles GVWR >8,500 lb).
September 1, 2011 to August 31, 2012	75 percent of vehicles (excluding vehicles GVWR >8,500 lb).
On or after September 1, 2012	All vehicles (excluding vehicles GVWR >8,500 lb), all vehicles produced by limited line and small volume manufacturers.
On or after September 1, 2013	All vehicles GVWR >8,500 lb, all vehicles manufactured by alterers and multistage manufacturers.

2. MDB test

The agency believed that manufacturers could meet the requirements of the upgraded MDB test without the need for a phase-in period. Therefore, we proposed that the upgraded MDB test would be effective 4 years after publication of a final rule. The agency requested comments on whether it would be appropriate to establish a phase-in for this requirement and whether a lead time shorter than 4 years would be appropriate.

The Alliance, DaimlerChrysler, Nissan, and Ferrari did not support the different effective dates for the pole test and the MDB test. The Alliance believed that ''occupant safety benefits are optimized and manufacturers' engineering resources are best utilized if the MDB and pole test requirements are addressed in vehicle designs simultaneously.'' The commenter also suggested that there should be an opportunity for limited line manufacturers to apply credits against the full compliance requirement for one year. DaimlerChrysler anticipated that ''the requirements represented in the oblique pole test may effect [sic] structural changes which, in turn, will influence performance in the MDB test mode.'' DaimlerChrysler believed that designing to the MDB and pole tests ''represents a development task which will require at least one product cycle (6 to 8 years) to complete.''

Nissan stated that its experience with side impact crashes leads it to believe that significant changes would be necessary to comply with the proposed MDB requirements. It also noted that the application of advanced credits would allow Nissan to more efficiently distribute resources to meet the proposed requirements.

Ferrari believed that ''improved chest protection would be needed even by vehicles whose armrest is already designed to reduce the risk of abdominal injuries, and changes would also be needed to vehicles that provide good to optimum chest protection when tested according to SINCAP or EuroNCAP.'' In Ferrari's opinion, the upgraded MDB test would require equal, if not greater, amount of redesign as the pole test. Therefore, it recommended the same phase-in time as was proposed for the pole test.

In contrast, Advocates, Consumers Union, and Public Citizen supported not having a phase-in for the upgraded MDB test.

Agency response: After consideration of the comments, NHTSA has decided

[89] *See* 70 FR 7414 (Feb. 14, 2005).

[90] Limited line and small volume manufacturers, alterers, and multistage manufacturers, are excluded from the 20/50/75 phase-in requirements. A small volume manufacturer is an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States. Limited line and small volume manufacturers, alterers, and multistage manufacturers are provided extra lead time so that they may maximize resources in planning to comply with the final rule.

[91] Limited line and small volume manufacturers, alterers, and multistage manufacturers, are excluded from the 20/50/75 phase-in requirements.

to adopt a phase-in for the MDB test, and align the phase-in schedule with the oblique pole test requirements, with advance credits. An aligned phase-in will allow manufacturers to optimize engineering resources to design vehicles that meet the MDB and pole test requirements simultaneously, thus reducing costs. Manufacturers, such as Nissan, will also be able to use credits to more efficiently distribute their resources to meet the requirements. It will also allow limited line manufacturers the opportunity to comply with the phase-in schedule with credits, or alternatively to achieve full compliance when the phase-in is completed. Final-stage manufacturers and alterers will be required to comply with the MDB test requirements at the end of the phase in, but may voluntarily certify compliance with the requirements prior to this date.

In response to Advocates, Consumers Union, and Public Citizen, the agency believes that it is appropriate to provide flexibility to manufacturers to upgrade both the pole and MDB requirements on the same schedule. When the agency published the NPRM, we did not anticipate that vehicles would need many structural changes to comply with the MDB test. We originally thought that the countermeasures necessitated by the rulemaking would entail a simple redesign of the door trim armrest area with additional padding and/or re-contouring of the door trim surface. However, upon review of the comments and the results of our own limited testing with the SID–IIs in the MDB tests, we agree with Nissan and Ferrari that required changes might involve a redesign of the vehicle side structure, particularly to address high pelvic loading and elevated rib deflections of the SID–IIs in the rear seats of some vehicles. By aligning the phase-in schedule of the new MDB requirements with the pole test, the agency believes that vehicle manufacturers can better optimize their vehicle designs and the overall occupant protection systems for side impact crashes.

In addition, the Alliance, Honda, and other commenters requested NHTSA to consider adopting the WorldSID into 49 CFR part 572 and using the dummy in the phase-in of this final rule. We are currently evaluating the dummy for possible incorporation into part 572. If incorporation of the dummy appears reasonable, we could undertake rulemaking on the WorldSID to integrate the dummy into the pole and MDB tests of FMVSS No. 214 during the phase-in period of this final rule. We may also consider rulemaking to incorporate thoracic and abdominal rib deflection criteria for the SID–IIs in the pole and MDB tests adopted today. By aligning the phase-in schedule of the new MDB requirements with the pole test, more flexibility is provided for the possible implementation of those rulemaking actions.

f. Related Side Impact Programs

1. Out-of-Position Testing

Background. The agency has been concerned about the potential risks of side impact air bags (SIAB) to out-of-position (OOP) occupants, particularly children, from the first appearance of side air bag systems in vehicles. NHTSA initiated research in the fall of 1998 into the interactions between OOP children and side air bags. In April 1999, NHTSA held a public meeting to discuss the potential benefits and risks of side impact air bags and the development of possible test procedures to assess those risks.[92]

Safety Need. The agency has investigated over 110 side impact air bag deployment crashes through NHTSA's Special Crash Investigations unit in order to determine whether a problem exists related to OOP occupants. There have been no fatalities and only one confirmed AIS 3+ injury due to a side air bag, this to a 76-year-old male driver. Side air bags [93] do not appear to pose a safety risk to OOP children, even taking into account exposure risks.

Technical Working Group Recommended Procedures. In July 1999, the Alliance, AIAM, the Automotive Occupant Restraints Council, and IIHS formed a technical working group (TWG) to develop recommended test procedures and performance requirements to evaluate the risk of side air bags to children who are out-of-position. In August 2000, the TWG issued a draft report, ''Recommended Procedures For Evaluating Occupant Injury Risk From Deploying Side Air Bags,'' The Side Air Bag Out-Of-Position Injury Technical Working Group, Adrian K. Lund (IIHS) Chairman, August 8, 2000. This report was revised in July 2003. The proposed procedures were based on the work of Working Group 3 of the International Organization of Standard (ISO) Technical Committee 10, which had developed draft procedures for evaluating side impact air bags.[94]

Under the TWG procedures, a 5th percentile female side impact dummy (SID–IIs), a 3-year-old and a 6-year-old Hybrid III frontal child dummy are placed in several positions close to the side air bag systems. The TWG procedures address side air bags that deploy from the seat backs (seat-mounted), those that deploy from the door or rear quarter panel, typically just below the window sill (side-mounted), those that deploy from the roof rail above the door (roof-mounted), and roof-rail and seat back/door systems. After the dummy is positioned as specified in the procedures, the air bag is deployed statically, and the dummy injury measures due to the deployment of the air bag are determined. The measured forces are compared to TWG's ''Injury Reference Values'' and ''Injury Research Values.'' [95] The TWG's limits on the Injury Reference Values are mostly the same as those in FMVSS No. 208 for OOP testing of frontal air bags.

NHTSA initiated a research program to evaluate the TWG procedures and propose, if necessary, any alternatives and modifications to assess the injury risk to OOP children. The agency's test program included 11 vehicles equipped with front seat side air bags and one vehicle equipped with rear seat side air bags. The TWG OOP test procedures were used as the baseline for selecting test positions. However, tests were performed with the basic TWG procedures with and without NHTSA variations. Many different types of production systems, including door-mounted thorax bags, seat-mounted head-thorax combination bags, and roof-mounted head protection systems, were tested using 3-year-old and 6-year-old Hybrid–III child dummies. The results were reported in a technical paper, ''Evaluation of Injury Risk from Side Impact Air Bags.'' (Proceedings of the 17th ESV Conference, June 2001, Paper # 331.) The main purpose of the test program was to assess the potential safety risks that any system could pose to OOP small adults and children due to deploying side air bags.

The main observations from the agency's research is summarized in the following:

[92] The agency has placed materials in Docket NHTSA–1999–5098 relating to the risks to out-of-position occupants from SIAB.

[93] For the purposes of this discussion, ''side air bags'' means side thorax air bags and combination thorax/head air bags, and not window curtains or inflatable tubular structures. Our testing found no reason for concern with window curtains or inflatable tubular structures and out-of-position children or adults.

[94] ''Road Vehicles—Test Procedures for Evaluating Occupant Interactions with Deploying Side Impact Airbags.'' The ISO procedures were finalized in October 2001 (ISO–TR 14933, October 2001).

[95] Injury Reference values are those that the majority of the TWG believed have a strong scientific basis. Injury Research Values are those that TWG believes currently have less scientific support or insufficient test experience to allow full confidence in their accuracy.

The TWG procedures address dummy sizes, seating positions, and expand the traditional injury assessment measures.

The TWG procedures are quite comprehensive and are very successful at discriminating between aggressive and non-aggressive SIABs.

The TWG procedures are adequate baseline procedures for SIAB OOP testing to minimize unreasonable risks to children and small adults.

For the 3- and 6-year-old dummies, the TWG test procedures do not always find the worst case conditions for some current SIAB systems.

The NPRM. The NPRM sought information on how meeting the requirements proposed by the NPRM would affect manufacturers' ability to meet the TWG procedures. The NPRM stated that the agency will continue to monitor compliance with the TWG test procedures and requirements by automotive manufacturers, and will conduct further testing of new air bag designs.

Comments: DaimlerChrysler commented that at this time, it does not know the extent of which the OOP occupants, as specified in the TWG, would be affected by the proposed requirements in the NPRM. However, DaimlerChrysler anticipated that side air bags designed in accordance to the NPRM may be in conflict with the TWG OOP requirements. Conversely, TRW believed that the side protection systems designed to meet the requirements of the NPRM could perform acceptably for OOP occupants. TRW also stated that it supports the efforts of the OOP TWG and does not believe there is a need for regulatory activity in this area.

Agency response: We have considered the comments on whether meeting the requirements proposed by the NPRM would affect manufacturers' ability to meet the TWG procedures. DaimlerChrysler, the only vehicle manufacturer commenting on this issue, stated it had no data to support its suggestion of a potential conflict between TWG and the proposed requirements of the NPRM, but anticipated there may be some.

NHTSA's testing has shown that, during the course of the 214 fleet testing program, there have been vehicles that have met the new requirements of this final rule and have also been reported to meet the TWG procedures. The Jetta, Volkswagen Beetle Convertible, Saab 9–3 Convertible and Honda Accord have met the pole test injury criteria with the ES–2re and have been certified by their respective manufacturer to the TWG OOP requirements. The Honda CRV met the pole test criteria with the SID–IIs and also has been certified to TWG OOP. These examples show that the oblique pole and MDB test requirements are not in conflict with the TWG guidelines. Further, air bag supplier TRW stated that side impact protection systems designed to meet the requirements of the NPRM could perform acceptably for OOP occupants. Based on the available information, we conclude that vehicles are able to meet the requirements of this final rule and those of the TWG OOP.

The agency monitors compliance with the TWG requirements by vehicle manufacturers. As part of the agency's Buying a Safer Car consumer information program, we publish whether a vehicle was certified to the TWG OOP requirements. We only state that a vehicle has met those requirements after the manufacturer has provided data showing that it conforms to TWG OOP. The agency also conducts spot testing to verify those results. If the knowledge we gain from our test program indicates that further actions are needed, we will take appropriate actions to do so.

2. Side NCAP

Honda asked that NHTSA use WorldSID in testing vehicles under the side impact new car assessment program if the manufacturer uses WorldSID for that vehicle's FMVSS No. 214 certification. Autoliv wanted NHTSA to address the effects of the rulemaking on NCAP. ''If there is a significant difference between Lateral NCAP and FMVSS 214 (MDB) test conditions and requirements, there may be significant challenges in meeting requirements of both (potentially conflicting) test conditions.''

Agency response: We have carefully considered Honda's suggestion. However, since we are not engaged in a rulemaking action on the WorldSID dummy at the present time, we can only commit to study the merit of Honda's suggestion during the course of our future research.

In response to Autoliv, we do not anticipate significant challenges or potential conflicts in meeting the requirements of both side NCAP and the final rule. The upgrade to FMVSS No. 214 is an enhancement to the protection currently provided by the standard. Based on our crash testing to date, vehicles that achieved a rating of four stars or better for both occupants in side NCAP tests will likely be among the better performers in meeting the requirements of the final rule. (The FMVSS No. 214 test is conducted at a lower speed than the side NCAP test.) We believe countermeasures, such as new side structure enhancements, new crash sensors and/or algorithms, and/or new head protection systems, will only improve a vehicle's performance in side NCAP and other side impact crashes.

Nonetheless, NHTSA carefully ensures that any changes to NCAP are based on sound science and careful, objective analysis of supporting data.[96] With the two new crash test dummies and a new crash test configuration added to the standard, the agency will continue to evaluate how to tailor the side NCAP program to complement the upgraded requirements of FMVSS No. 214.

3. Cross-References to FMVSS No. 214

Honda pointed out that FMVSS Nos. 201, 301 and 305 contain cross-references to sections of FMVSS No. 214 that will be renumbered by this final rule. We are amending those cross-references in FMVSS Nos. 201, 301 and 305 to achieve consistency with today's final rule.

g. Comments on the PEA

Several comments were received on the agency's preliminary economic assessment (PEA) for the NPRM. Commenters included Maserati and Ferrari, the Alliance, and the Specialty Equipment Manufacturers Association (SEMA).

Maserati and Ferrari believed that NHTSA underestimated the costs of small manufacturers to comply with the proposed rule. The Alliance had questions about how the PEA estimated the benefits of the rulemaking, e.g., how the agency identified the target population of potentially injured occupants that would be addressed by the rulemaking. The Alliance also believed that we did not demonstrate the practicability of meeting the proposed test requirements, and stated that the principles set forth in the Data Quality Act were not met (the commenter believed that some of the data in the PEA had errors and that the PEA contained some unsupported assumptions).

The agency has responded to the comments on the costs and benefits analysis and other issues of the PEA in the Final Regulatory Impact Analysis (FRIA) [97] (see Appendix G of the FRIA),

[96] NHTSA has announced plans to evaluate near and long-term approaches to enhance NCAP activities. ''The New Car Assessment Program; Suggested Approaches for Enhancements,'' 72 FR 3473; January 25, 2007, Docket 26555. An enhancement under consideration is to include the pole test in NCAP assesssments.

[97] The FRIA may be obtained by contacting Docket Management at the address or telephone number provided at the beginning of this document. You may also read the document via the Internet,

which has been placed in the agency's docket for this final rule.

VII. Costs and Benefits

As noted above, we have prepared an FRIA to accompany this final rule. The FRIA provides an analysis of the potential impacts of the vehicle-to-pole side impact test and the modifications to the MDB test. It also addresses comments the agency received in response to the agency's Preliminary Economic Assessment that accompanied the NPRM. A summary of the FRIA follows.

Benefits. The agency identified the baseline target population and then estimated the fatality or injury reduction rate. The target population was defined as occupants who sustained fatal and/or AIS 3+ injuries to the head, chest, abdomen or pelvis in side crashes. Target fatalities and MAIS 3–5 injuries were derived from 2000–2004 CDS. The agency limited the target population to crashes in which the delta–V was in the range of 19 to 40 km/h (12 to 25 mph). In identifying the target population, occupants with heights of 165 cm (65 inches) or taller were assumed to be represented by the 50th percentile male dummy (the ES–2re), and the remaining occupants were assumed to be represented by the 5th percentile female dummy (the SID–IIs). As discussed in the FRIA, several additional adjustments were made to the target population to address voluntary commitments, belt use, children, etc. The target population was then determined to be 2,311 fatalities and 5,891 non-fatal serious to critical MAIS AIS 3–5 injuries in crashes with a delta-V of 19 to 40 km/h (12–25 mph) for near-side occupants.[98] The 2,311 fatalities were divided into two groups for the analysis: (1) Vehicle-to-pole impacts; and (2) vehicle-to-vehicle or other roadside object impacts, which include partial ejections in these cases. Further adjustments were made for assumed full compliance with the FMVSS No. 201 upper interior requirements, 100 percent Electronic Stability Control (ESC) penetration in the model year (MY) 2011 new vehicle fleet, current performance that conforms to the final rule requirements adopted today (based on the results of the NHTSA 214 fleet testing program), and manufacturers' planned installation of side air bags.[99] The incremental benefits of the final rule are estimated as:

—266 fatalities saved and 352 AIS 3–5 injuries prevented, if a combination air bag, 2-sensor per vehicle system were used. (The combination air bag, 2-sensor system would be the least costly side air bag system that would enable a vehicle to meet the standard.)

—311 fatalities saved and 361 MAIS 3–5 injuries prevented, if a window curtain and thorax air bag 2-sensor system were used.

—311 fatalities saved and 371 MAIS 3–5 injuries prevented, if a window curtain and thorax air bag 4-sensor system were used.

Window curtains are estimated to have more benefits than combination air bags because we assumed that window curtains would have an impact on partial ejections that occur in side impacts without rollover, while we assume no benefits for combination air bags in far-side partial ejections without rollover. No benefits are claimed for complete ejections in rollovers, since the effectiveness of the combination air bags or window curtains to contain occupants in a rollover event has not been established at this time.

The majority of the benefits are for front seat occupants, but a small number of benefits are included for rear seat occupants.

TABLE 13.—BENEFITS OF THE FINAL RULE BY COUNTERMEASURE [100]

	Combination air bag 2 sensors	Curtain & thorax bags 2 sensors	Curtain & thorax bags 4 sensors
Fatalities	266	311	311
AIS 3–5 Injuries	352	361	371

Costs. In the FRIA, the agency discusses the costs of the different technologies that could be used to comply with the tests, and also estimates compliance tests costs. Based on the results of the 2005 tests of vehicles with side air bags (Section IV of this preamble, *supra*), the agency estimates that the majority of vehicle manufacturers currently installing side head air bag systems will have to widen their present air bags. They might not need to add side impact sensors to their vehicles or develop more advanced sensors to meet an oblique pole test. Potential compliance costs for the pole test vary considerably, and are dependent upon the types of head and thorax side air bags chosen by the manufacturers and the number of sensors used in the system. As noted above, NHTSA estimates that the combination air bag, 2-sensor system would be the least costly side air bag system that would enable a vehicle to meet the standard.

The costs for installing new systems are estimated to range from:

—a wide combination head/thorax side air bag system with two sensors at $126 per vehicle,

—to wide window curtains and wide thorax side air bags with four sensors at a cost of $280 per vehicle.

Given the level of compliance found in our vehicle testing [101] and the manufacturers' planned installation of side air bags in MY 2011, the total annual incremental cost to meet this final rule with the lower cost combination air bag is estimated to be $429 million. The total annual incremental cost for the wide window

by following the instructions in the section below entitled, ''Viewing Docket Submissions.'' The FRIA will be listed in the docket summary.

[98] The Agency's analysis also found some fatality benefits for far-side unbelted occupants. In 2004 FARS, there were 1,441 unbelted far-side occupant fatalities in side impacts.

[99] Seven manufacturers (comprising about 90 percent of all light vehicle sales) submitted confidential data responding to a NHTSA request for planned side air bag and projected sales through model year (MY) 2011. For remaining manufacturers, MY 2006 side air bag percentages were assumed to remain constant through MY 2011. The projected MY 2011 side air bag sales data show that the majority of vehicles (about 93%) will be equipped with side air bags. Based on the sales data, we expect that about 95% and 78% of these vehicles will be equipped with curtain and thorax bags, respectively.

[100] The benefits of 100 percent of the fleet having side air bags compared to 0 percent of the fleet having side air bags, assuming 100 percent of vehicles have Electronic Stability Control systems, are estimated to be 976 fatalities and 932 AIS 3–5 injuries.

[101] We assumed that the performance of side air bags that would have been installed in MY 2011 vehicles in the absence of the oblique pole test requirements would have been equivalent to the performance observed in the agency's tests of MY 2005 vehicles.

curtains and wide thorax side air bags with four sensors is estimated to be $1.1 billion (2004 dollars). This amounts to a range of total incremental annual cost of $429 million to $1.1 billion.

The agency's data show that the majority of side air bag systems are currently equipped with two side impact sensors. The total annual incremental cost for the most likely air bag system (curtain and thorax bag two-sensor countermeasure) would be about $560 million.

TABLE 14.—INCREMENTAL TOTAL COSTS AND VEHICLE COSTS

[$2004]

	Combination head/thorax side air bags	Window curtain and thorax side air bags, 2 sensors	Window curtain and thorax side air bags, 4 sensors
Incremental total costs	*$429	*$560	**$1.1
Total vehicle cost per system	126	243	280

*Million.
**Billion.

Cost Per Equivalent Fatality Prevented. NHTSA estimated the costs per equivalent life saved, using a 3 and a 7 percent discount rate. The low end of the range is $1.6 million per equivalent life saved, using a 3 percent discount rate. That low end estimate assumes that manufacturers will install combination head/thorax air bags rather than separate window curtains and thorax air bags, in vehicles that currently have no side impact air bags or only thorax side impact air bags. The high end of the range is $4.6 million per equivalent life saved, using a 7 percent discount rate. The high end estimate assumes that manufacturers will install separate window curtains and thorax air bags with four sensors.

TABLE 15.—COSTS PER EQUIVALENT LIFE SAVED PRESENT DISCOUNTED VALUE

[in millions]

Cost per equivalent life saved	Combination head/thorax side air bags	Window curtain and thorax side air bags, 2 sensors	Window curtain and thorax side air bags, 4 sensors
3% Discount Rate	$1.6	$1.8	$3.7
7% Discount Rate	2.0	2.3	4.6

Net Benefits. Net benefit analysis differs from cost effectiveness analysis in that it requires that benefits be assigned a monetary value, and that this value is compared to the monetary value of costs to derive a net benefit. NHTSA estimates that the high end of the net benefits is $561 million for the combination head/thorax air bags using a 3 percent discount rate and the low end is negative $225 million for the curtain + thorax bags with four sensors, using a 7 percent discount rate. Both of these are based on a $3.7 million cost per equivalent life saved.

TABLE 16.—NET BENEFITS WITH $3.7M COST PER LIFE

[In millions]

Countermeasure	Benefit		Net benefit	
	3% discount	7% discount	3% discount	7% discount
Combo + 2 Sensors	$990	$787	$561	$357
Curtain + 2 Sensors	1,127	895	567	336
Curtain + 4 Sensors	1,131	899	7	−225

VIII. Rulemaking Analyses and Notices

a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is economically significant and was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. The FRIA fully discusses the estimated costs and benefits of this rulemaking action. The costs and benefits are summarized in section VII of this preamble, *supra.*

b. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this action

will not significantly affect the price of new motor vehicles.

The rule will directly affect motor vehicle manufacturers. NHTSA requested comments on an addendum to the initial regulatory flexibility analysis (IRFA) that was contained in the Preliminary Economic Assessment (PEA) for the May 17, 2004 NPRM on FMVSS No. 214 (Docket No. 17694). The addendum to the IRFA discusses the economic impacts on small vehicle manufacturers, of which there are four [102] (70 FR 2105; January 12, 2005).

NHTSA stated in the addendum that our tentative conclusion was that the rule will not have a significant economic impact on the four manufacturers. We believed that the small vehicle manufacturers are not likely to certify compliance with a vehicle test, but will use a combination of component testing by air bag suppliers and engineering judgment. Already much of the air bag work for these small vehicle manufacturers is done by air bag suppliers. Typically, air bag suppliers are supplying larger vehicle manufacturers during the development and phase-in period, and do not have the design capabilities to handle all of the smaller manufacturers. The rulemaking proposal accounted for this limitation by proposing to allow small manufacturers that have limited lines to comply with the upgraded requirements at the end of the phase-in period, to reduce the economic impact of the rule on these small entities.

As explained in the addendum, we also believed that the rulemaking would not have a significant impact on the small vehicle manufacturers because the market for the vehicles produced by these entities is highly inelastic. Purchasers of these vehicles are attracted by the desire to have an unusual vehicle. Further, all light vehicles must comply with the upgraded side impact requirements. Since the price of complying with the rule will likely be passed on to the final consumer, the price of competitor's models will increase by similar amounts. In addition, we did not believe that raising the price of a vehicle to include the value of a combination head-thorax side air bag will have much, if any, effect on vehicle sales.

The agency received no comments on the addendum to the IRFA concerning the impacts of the rule on small vehicle manufacturers.

For the reasons explained in the IRFA, NHTSA concludes that this final rule will not have a significant impact on small vehicle manufacturers.

[102] Avanti, Panoz, Saleen, and Shelby.

The final rule indirectly affects air bag manufacturers, dummy manufacturers and seating manufacturers. The agency does not believe that there are any small manufacturers of air bags. There are several manufacturers of dummies and/or dummy parts, some of which are considered small businesses. The rule is expected to have a positive impact on these types of small businesses by increasing demand for dummies.

NHTSA knows of approximately 21 suppliers of seating systems, about half of which are small businesses. If seat-mounted head/thorax air bags are used to meet the new pole test, the cost of the seats will increase. However, we believe that the costs will be passed on to the consumer. NHTSA believes that air bag manufacturers will provide the seat suppliers with the engineering expertise necessary to meet the new requirements.

NHTSA notes that final-stage vehicle manufacturers and alterers buy incomplete vehicles, add seating systems to vehicles without seats, and/or make other modifications to the vehicle, such as replacing existing seats with new ones or raising the roofs of vehicles. A second-stage manufacturer or alterer modifying a vehicle with a seat-mounted thorax air bag might need to use the existing seat or rely on a seat manufacturer to provide the necessary technology. In either case, the impacts of this final rule on such entities will not be significant. Final-stage manufacturers or alterers engaged in raising the roofs of vehicles will not be affected by this rulemaking, since this final rule excludes vehicles with raised or altered roofs from the pole test.

The Specialty Equipment Market Association (SEMA) believed that ''aftermarket equipment manufacturers and other entities that diagnose, service, repair and upgrade motor vehicles'' may be affected by the final rule if their installed products interact with equipment or systems used by vehicle manufacturers to meet the FMVSS No. 214 requirements. SEMA's comment focused on three issues. The following discusses those comments and our responses thereto.

1. SEMA said that, with regard to frontal air bags and air bag sensors installed pursuant to FMVSS No. 208, ''Occupant crash protection,'' manufacturers of aftermarket leather and fabric seating products frequently have not had access to electronic information about the frontal air bag sensor in the vehicle seat. Consequently, SEMA stated, the aftermarket manufacturer or installer could not reprogram the sensor after the product has been installed, and in many instances, had to return the vehicle to the dealership for reprogramming. SEMA suggested that NHTSA should—

> make sure that electronic data is open and available in such a way so as not to preclude installation, servicing, or repair of legal aftermarket equipment * * * Specifically, SEMA believes it is appropriate to follow the EPA [Environmental Protection Agency] OBD [on-board diagnostic system] precedent in that any and all electronic data, or any that can be accessed through the available technology, must be made available to the vehicle owner to the extent that such access is available to other parties. Further, SEMA believes it is appropriate that NHTSA consider setting standards for data retrieval communication protocols, connectors and tools, and that such information and tools be made available to the public in a timely and cost-effective manner.

Agency response: Requiring vehicle manufacturers to ensure that electronic information about the SIABs is ''open and available * * * so as not to preclude installation, servicing, or repair'' of aftermarket equipment is beyond the scope of this rulemaking. Furthermore, we do not have any information showing that such a requirement is necessary or appropriate at this time. Vehicles currently include many complex systems, and although dealer involvement may be necessary in some cases, the marketplace has made available sufficient information to permit convenient maintenance and repair of such systems. We do not believe that SIAB technology will prove any different in this regard. There are a substantial number of vehicles currently equipped with SIAB systems—some portion of which it is expected would have had aftermarket modifications of the types suggested by SEMA—and there has been no indication of any problem to date. Additional information may become available in the future that sheds light on how SIAB systems interact with other vehicle equipment and systems. We will monitor the data and test information we receive on this issue, and we encourage all interested parties to share relevant information with the agency and the public as it becomes available. If we later find significant safety risks associated with the interaction between SIAB systems and items of equipment (aftermarket or otherwise), we will work toward addressing these possible problems.

Further, we are not requiring vehicle manufacturers to share all electronic data with the vehicle owner. Such a requirement is unnecessary at this time, for the reasons discussed above. We have not been presented with any evidence of a safety or compatibility problem between SIABs and other vehicle systems or equipment, and the

market has tended to respond to consumer demands that sufficient information be provided to permit third party vehicle servicing. Nonetheless, NHTSA strongly encourages SEMA and its members to develop relationships with vehicle and SIAB system manufacturers to research and find solutions to these questions.

2. SEMA stated that ''many dealerships have received service bulletins from the vehicle manufacturer warning them against the installation of aftermarket seat covers, citing concern that installation may interfere with the front seat airbag sensors.'' SEMA suggested that NHTSA should ''issue a regulation or policy statement which states that it is illegal to issue service bulletins or other communications that warn dealers about potential warranty denial based on the mere presence or installation of aftermarket equipment.''

Agency response: We are unable to concur with SEMA that NHTSA should provide the requested regulation and/or policy statement governing the communications between manufacturers and dealers on warranties. Communications between vehicle manufacturers and their dealers on the warranties is a topic that is beyond the scope of the rulemaking. However, we encourage OEMs and the aftermarket sales industry to work together to share information on the effect of aftermarket equipment on vehicle warranties.

3. SEMA believed that NHTSA did not consider all of the small businesses potentially impacted by the final rule. The commenter believed that the rule ''will directly affect a number of small entities including manufacturers and installers of seating equipment, interior upholstery, sunroofs and running boards. Beyond that, there are potentially thousands of small entities that may have the opportunity to diagnose, service, repair and upgrade motor vehicles.'' SEMA stated, ''While it may be possible to work with the air bag manufacturers to design seating equipment, upholstery, sunroofs, running boards and other items of equipment that may effect [sic] air bag sensors, the information is of little value if the vehicle's computer system needs to be reprogrammed to accommodate the new equipment. The reg-flex analysis does not take into account that the vehicle manufacturers are the source of this information, not the air bag manufacturers. Unless such service information is forthcoming, thousands of small businesses may be directly impacted by the rule change.''

Agency response: In responding to this comment, we note that NHTSA is not required to perform a regulatory flexibility analysis for entities not directly impacted by its rulemaking. In its 2003 publication titled ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' (''RFA Guide''), the Small Business Administration states that ''[t]he courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them.'' [103] The cases cited by the RFA Guide indicate that a rule ''directly regulates'' only the entities to which the rule applies—for example, electric utilities but not independent electricity cooperatives in a FERC rate-setting regulation,[104] or automobile manufacturers but not aftermarket businesses in an EPA 'deemed-to-comply' rule.[105] In *Motor & Equipment Mfrs. Ass'n* v. *Nichols*, the D.C. Circuit described the distinction as follows: ''The RFA itself distinguishes between small entities subject to an agency rule, to which its requirements apply, and those not subject to the rule, to which the requirements do not apply.'' [106]

This final rule establishes performance requirements for side impact protection and applies to new motor vehicles. The only entities subject to these requirements are vehicle manufacturers. NHTSA has already analyzed the potential impacts of the rule on these directly affected entities, as the FRIA makes clear. Nothing in this rule subjects the entities described by SEMA to NHTSA's regulation.

With that said, although NHTSA has no obligation to perform a regulatory flexibility analysis to consider the potential impacts of this final rule on such non-directly regulated entities, we are nevertheless concerned about the impact our rules have on all parties. Again, we have considered the effects that this final rule might have on aftermarket motor vehicle equipment manufacturers and the motor vehicle service industry. The agency is not aware of any significant compatibility problems between SIAB systems and other vehicle equipment, and SEMA provided no evidence that side air bag technology will preclude installation, servicing, or repair of aftermarket equipment, including whether and the degree to which particular aftermarket modifications of a vehicle entail the reprogramming of a vehicle's computer system. The agency cannot hypothesize on all possible interactions between SIAB technologies and different vehicle equipment, and we are unable to address speculative arguments regarding compatibility problems for which there is no evidence. There are a substantial number of vehicles currently equipped with SIAB systems—some portion of which it is expected would have had aftermarket modifications of the types suggested by SEMA—and there has been no indication of any problem to date.

Nonetheless, we encourage manufacturers of aftermarket equipment that cannot independently assess whether their products will affect original SIAB systems to collaborate with air bag and vehicle manufacturers to make that assessment or to undertake concerted testing to develop products that are compatible with the SIABs. SEMA's comment indicated that companies that supply leather or fabric seating already ''have tested their products to ensure that the leather or fabric does not adversely impact the air bag seat sensors.'' [107] We believe that the aftermarket installers of other products can likewise embark on testing or collaborative work with air bag and vehicle manufacturers to ensure that the installation is compatible with the vehicles' SIAB systems.

Further, aftermarket businesses have already been servicing vehicles with SIABs and other complex systems that use computer technology. Although vehicle dealer involvement may be necessitated in some cases, we do not believe that involvement has resulted in a significant economic impact on the businesses. The marketplace has generally made available sufficient information to permit the aftermarket installation of equipment, and the maintenance and repair of vehicles with SIAB and other systems. There is no indication that vehicle manufacturers and dealers have not made and will not continue to make necessary information reasonably available to the aftermarket sales and service industries. However,

[103] Office of Advocacy, United States Small Business Administration, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,'' 2003, p. 20.

[104] *Mid-Tex Electric Cooperative, Inc.* v. *Federal Energy Regulatory Commission (FERC)*, 773 F.2d 327, 341 (DC Cir. 1985) (stating that ''Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy.'').

[105] *Motor & Equipment Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449, 467 (DC Cir. 1998) (holding that ''Because the deemed-to-comply rule did not subject any aftermarket businesses to regulation, EPA was not required to conduct a flexibility analysis as to small aftermarket businesses. It was only obliged to consider the impact of the rule on small automobile manufacturers subject to the rule, and it met that obligation.'').

[106] *Id.*, fn 18, at 467 (describing 5 U.S.C. 603(b)(3) and (4)).

[107] See also submission from Kugi Florian in NHTSA Docket 17694 (Walser aftermarket seat cover made compatible with seat-mounted side air bags).

we will continue to monitor the data and test information we receive on this issue, and we encourage all interested parties to share relevant information with the agency and the public as it becomes available. If we later find problems with the information being made available to the aftermarket sales and service industries, we will take appropriate steps to address these problems.

For the aforementioned reasons, we conclude that this rule will not have a significant negative economic impact on a substantial number of small entities.[108]

c. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. *See Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's standard and test regime. NHTSA may opine on such conflicts in the future, if warranted. *See id.* at 883–86.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995). These effects are discussed earlier in this preamble and in the FRIA. UMRA also requires an agency issuing a final rule subject to the Act to select the ''least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.''

The preamble and the FRIA identify and consider a number of alternatives, concerning factors such as test speed, test angle, number and type of dummies used in the test, and phase-in schedule. Alternatives considered by and rejected by us would not fully achieve the objectives of the alternative preferred by NHTSA (a reasonable balance between the benefits and costs of a 20 mph oblique pole test with the ES–2re and the SID–IIs, and a reasonable balance of the benefits and costs of an upgrade of the MDB test). Further, Section IX of the FRIA discusses three alternative regulatory approaches to the oblique pole test that we considered: (a) Using the 90 degree pole test set forth in FMVSS No. 201; (b) using the Voluntary Commitment approach (perpendicular moving barrier test with one test dummy); and (c) applying a pole test to front and rear seats. The agency believes that it has selected the most cost-effective alternative that achieves the objectives of the rulemaking.

e. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

f. Executive Order 12778 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

g. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

h. Paperwork Reduction Act (PRA)

Under the PRA of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The final rule contains a collection of information because of the proposed phase-in reporting requirements. There is no burden to the general public.

[108] Additional information concerning the potential impacts of the requirements on small entities is presented in the FRIA.

The collection of information requires manufacturers of passenger cars and of trucks, buses and MPVs with a GVWR of 4,536 kg (10,000 lb) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the vehicle-to-pole and MDB test requirements of FMVSS No. 214 during the phase-in of those requirements. The phase-in of both the pole and MDB test requirements will cover three years. The purpose of the reporting and recordkeeping requirements is to assist the agency in determining whether a manufacturer of vehicles has complied with the requirements during the phase-in period.

We are submitting a request for OMB clearance of the collection of information required under today's final rule. These requirements and our estimates of the burden to vehicle manufacturers are as follows:

NHTSA estimates that there are 21 manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less;

NHTSA estimates that the total annual reporting and recordkeeping burden resulting from the collection of information is 1,260 hours;

NHTSA estimates that the total annual cost burden, in U.S. dollars, will be $0. No additional resources will be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own use.

A **Federal Register** document has provided a 60-day comment period concerning the collection of information. The Office of Management and Budget (OMB) promulgated regulations describing what must be included in such a document. Under OMB's regulations (5 CFR 320.8(d)), agencies must ask for public comment on the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected; and,

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The NPRM requested that organizations and individuals wishing to submit comments on the information collection requirements direct them to the docket for the NPRM. The agency did not receive any comments on the information collection requirements.

i. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113),

> all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and the Society of Automotive Engineers. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

When NHTSA developed the vehicle-to-pole test that was adopted into FMVSS No. 201, the agency based the test on a proposed ISO test procedure found in ISO/SC10/WG1 (October 2001). In developing today's final rule, we considered the draft ISO standard and ISO draft technical reports related to side air bags performance to guide our decision-making to the extent consistent with the Safety Act. The notable differences between the draft ISO standard and this final rule relate to: the diameter of the pole (ISO draft technical reports recommend the use of a 350 mm pole, while NHTSA uses a 254 mm pole in FMVSS No. 201 and will use such a pole in FMVSS No. 214), and the angle of approach of the test vehicle to the pole (ISO specifies 90 degrees, while our final rule uses a 75 degree angle). The agency's reasons for a 254 mm pole were discussed in the NPRM. The reasons for an oblique, 32 km/h (20 mph), angle of approach were discussed earlier in this document.

IX. Appendices

Appendix A—Glossary

Categories of Side Air Bags

Combined (also called ''integrated,'' ''combination'' or ''combo'') side air bag system. Incorporates both a head air bag system and a torso side air bag into one unit that is typically installed in the seat back.

Curtain. A ''curtain'' type side air bag system (referred to as ''curtain bags,'' ''side curtain air bags,'' ''window curtains,'' ''air curtains,'' or ''AC''). A curtain is an inflatable device that is fixed at two points, one at the front end of the vehicle's A-pillar and the other along the roof rail near the C-pillar. It is installed and stored un-deployed under the roof rail headliner. When deployed, the curtain inflates to provide a cushioned contact surface for the head, spanning the side of the vehicle, down from the roof rail across the windows. This system would provide head protection for front and possibly rear seat occupants in outboard seating positions in side crashes.

Head air bag system (or head protection system (HPS)). The term comprises different types of head protection systems, such as curtain bags, installed either as a stand alone system or combined with a thorax side air bag.

Side impact air bag (SIAB). The term refers to side air bags generally.

Torso (or thorax) side air bag. A ''torso'' (or ''thorax'') side air bag that can be installed in either the seat back or the vehicle door. As the name indicates, the system would provide protection for the torso but not for the head.

Appendix B—Existing FMVSS No. 214

FMVSS No. 214 specifies two types of performance requirements intended to protect the thoracic and pelvic regions of an occupant: ''quasi-static'' requirements and ''dynamic'' requirements. They apply to passenger cars and to multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less and 6,000 lb or less, respectively.

The quasi-static requirements limit the extent to which the side door structure of a vehicle is pushed into the passenger compartment during a side impact. The standard requires each side door to resist crush forces that are applied by a piston pressing a 300 mm (12 inch) steel cylinder against the door's outer surface in a laboratory test. Since the requirement became effective in 1973, vehicle manufacturers have generally chosen to meet the requirement by reinforcing the side doors with metal beams.

The dynamic side impact test currently regulates the level of crash forces that can be experienced by an occupant's chest and pelvis when seated in a vehicle struck in a side impact. The dynamic requirements focus on thoracic and pelvic protection because contact

between the thorax and the side interior has been the primary source of serious injuries and fatalities.

The dynamic side impact test simulates a 90-degree intersection impact of a striking vehicle traveling 48 km/h (30 mph) into a target (i.e., test) vehicle traveling 24 km/h (15 mph). This is achieved by running a moving deformable barrier (MDB), which has all wheels rotated 27 degrees (crab angle) from the longitudinal axis, into the side of a stationary (test) vehicle at a 90-degree contact angle with a 54 km/h (33.5 mph) closing speed. At the initial contact, the longitudinal axes of the MDB and the test vehicle are perpendicular to each other. Two 50th percentile adult male side impact dummies (SIDs) are used in the target vehicle. They are positioned on the struck side of the vehicle, one in the front seat with the other directly behind in the rear seat.

The MDB, which simulates the striking (i.e., bullet) vehicle, has a mass of 1,361 kilograms (kg) (3,000 lb). The weight of the MDB and the geometry and material properties of the MDB's aluminum honeycomb contact face were derived from an adjustment of the average properties of the vehicle fleet (passenger cars and LTVs) in existence at the time of the development of the dynamic side impact regulation.

The test procedures focus on the dummy's chest and pelvis acceleration responses, which have been correlated with crash and test data regarding the conditions that produce serious occupant injuries. The instrumented dummies must not exhibit chest accelerations and pelvic accelerations above specified thresholds in order to pass the test. The maximum rib and spine accelerations measured on the chest are averaged into a single metric called the Thoracic Trauma Index (TTI(d)), which has an 85g limit for 4-door vehicles and a 90g limit for 2-door vehicles. The pelvic acceleration has a 130g limit.

Appendix C—Test Data From NPRM

The NPRM presented the following data from tests of an ES–2re and a SID–IIsFRG dummy in oblique pole and FMVSS No. 214 MDB tests.

TABLE 1 TO APPENDIX C.—75-DEGREE POLE TEST RESULTS ES–2 DUMMY OR ES–2RE DUMMY

Test vehicle	Restraint*	HIC_{36}	Rib-def. (mm)	Lower spine (g)	Abd.-force (N)	Pubic-force (N)
	Proposed limits	1,000	*** 35–44	82	***2,400–2,800	6,000
Test Results Using FMVSS No. 214 Seating Position						
1999 Volvo S80**	AC+Th	329	48.7	51.2	1,550	1,130
2000 Saab 9–5**	Comb	171	49.4	49.0	1,370	1,730
2004 Honda Accord**	AC+Th	446	30.7	51.7	1,437	2,463
2004 Toyota Camry**	AC+Th	452	43.4	52.5	1,165	1,849
Test Results Using FMVSS No. 201 Seating Position						
1999 Nissan Maxima	Comb	5,254	35.7	45.1	1,196	2,368
1999 Volvo S80	AC+Th	465	40.7	51.4	1,553	1,700
2000 Saab 9–5	Comb	243	49.9	58.3	1,382	2,673
2001 Saturn L200	AC	670	52.3	78.2	1,224	2,377
2002 Ford Explorer**	AC	629	43.0	98.4	2,674	2,317

*Comb. = combination head/chest SIAB; AC = air curtain; Thorax or Th=chest SIAB.
**Test was conducted with the ES–2re dummy.
***The agency stated that a particular value within this range would be selected.

TABLE 2 TO APPENDIX C.—75-DEGREE POLE TEST RESULTS

[SID–IIsFRG dummy]

Test vehicle	Restraint*	HIC_{36}	Lower spine (g)	Pelvis (N)
Proposed limits		1,000	82	5,100
2003 Toyota Camry (tested April 2003)	AC+Th (remotely fired at 11 ms)	512	70	4,580
2003 Toyota Camry (tested March 2003)	AC+Th (bags did not deploy)	8,706	78	5,725
2000 Saab 9–5	Comb	2,233	67	6,045
2002 Ford Explorer	AC (remotely fired at 13 ms)	4,595	101	7,141

*Comb.=head/chest SIAB; AC=air curtain; Th=chest SIAB

TABLE 3 TO APPENDIX C.—FMVSS NO. 214 MDB TEST RESULTS

[ES–2re driver]

Test vehicle	Restraint HPS and/or SIAB	HIC_{36}	Rib-def. (mm)	Lower spine (g)	Abd.-force (N)	Pubic-symph. (N)
Proposed limits		1,000	*35–44	82	*2,400–2,800	6,000
2001 Ford Focus	None	137	36	60	1,648	2,833
2002 Chevrolet Impala	None	69	46	49	1,225	1,789

*The agency stated that a particular value within this range would be selected.

TABLE 4 TO APPENDIX C.—FMVSS NO. 214 MDB TEST RESULTS

[ES–2re rear passenger]

Test vehicle	Restraint HPS and/or SIAB	HIC_{36}	Rib-def. (mm)	Lower spine (g)	Abd.-force (N)	Pubic-symph. (N)
Proposed limits		1,000	35–44	82	*2,400–2,800	6,000
2001 Ford Focus	None	174	20	59	1,121	2,759
2002 Chevrolet Impala	None	187	12	58	4,409	2,784

*The agency stated that a particular value within this range would be selected.

TABLE 5 TO APPENDIX C.—FMVSS NO. 214 MDB TEST RESULTS

[SID–IIsFRG driver]

Test vehicle	Restraint HPS and/or SIAB	HIC_{36}	Lower spine (g)	Pelvis (N)
Proposed limits		1,000	82	5,100
2001 Ford Focus	None	181	72	5,621
2002 Chevrolet Impala	None	76	52	2,753
2001 Buick Le Sabre	Thorax	130	67	4,672

TABLE 6 TO APPENDIX C.—FMVSS NO. 214 MDB TEST RESULTS

[SID–IIsFRG rear passenger]

Test vehicle	Restraint HPS and/or SIAB	HIC_{36}	Lower spine (g)	Pelvis (N)
Proposed limits		1,000	82	5,100
2001 Ford Focus	None	526	65	3,997
2002 Chevrolet Impala	None	153	89	5,711
2001 Buick Le Sabre	None	221	77	4,041

List of Subjects

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 585

Motor vehicle safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.201 is amended by revising S6.2(b)(3), adding S6.2(b)(4), and revising S8.18, S8.19 and S8.28, to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S6.2 *Vehicles manufactured on or after September 1, 2002 and vehicles built in two or more stages manufactured after September 1, 2006.*

* * *

(b) * * *

(3) Except as provided in S6.2(b)(4), each vehicle shall, when equipped with a dummy test device specified in 49 CFR part 572, subpart M, and tested as specified in S8.16 through S8.28, comply with the requirements specified in S7 when crashed into a fixed, rigid pole of 254 mm in diameter, at any velocity between 24 kilometers per hour (15 mph) and 29 kilometers per hour (18 mph).

(4) Vehicles certified as complying with the vehicle-to-pole requirements of S9 of 49 CFR 571.214, *Side Impact Protection,* need not comply with the pole test requirements specified in S6.2(b)(3) of this section.

* * * * *

S8.18 *Adjustable seats—vehicle to pole test.* Initially, adjustable seats shall be adjusted as specified in S8.3.1 of Standard 214 (49 CFR 571.214).

S8.19 *Adjustable seat back placement—vehicle to pole test.* Initially, position adjustable seat backs in the manner specified in S8.3.1 of Standard 214 (49 CFR 571.214).

* * * * *

S8.28 *Positioning procedure for the Part 572 Subpart M test dummy—vehicle to pole test.* The part 572, subpart M, test dummy is initially positioned in the front outboard seating position on the struck side of the vehicle in accordance with the provisions of S12.1 of Standard 214 (49 CFR 571.214), and the vehicle seat is positioned as specified in S8.3.1 of that standard. The position of the dummy is then measured as follows. Locate the horizontal plane passing through the dummy head center of gravity. Identify the rearmost point on the dummy head in that plane. Construct a line in the plane that contains the rearward point of the front door daylight opening and is perpendicular to the longitudinal vehicle centerline. Measure the longitudinal distance between the rearmost point on the dummy head and this line. If this distance is less than 50 mm (2 inches) or the point is not forward of the line, then the seat and/or dummy positions is adjusted as follows. First, the seat back angle is adjusted, a maximum of 5 degrees, until a 50 mm (2 inches) distance is achieved. If this is not sufficient to produce the 50 mm (2 inches) distance, the seat is moved forward until the 50 mm (2 inches) distance is achieved or until the knees of the dummy contact the dashboard or knee bolster, whichever comes first. If the required distance cannot be achieved through movement of the seat, the seat back angle is adjusted even further forward until the

50 mm (2 inches) distance is obtained or until the seat back is in its fully upright locking position.

* * * * *

■ 3. Section 571.214 is revised to read as follows:

§ 571.214 Standard No. 214; Side impact protection.

S1 *Scope and purpose.*

(a) *Scope.* This standard specifies performance requirements for protection of occupants in side impacts.

(b) *Purpose.* The purpose of this standard is to reduce the risk of serious and fatal injury to occupants of passenger cars, multipurpose passenger vehicles, trucks and buses in side impacts by specifying strength requirements for side doors, limiting the forces, deflections and accelerations measured on anthropomorphic dummies in test crashes, and by other means.

S2 *Applicability.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or less, except for walk-in vans, or otherwise specified.

S3 *Definitions.*

Contoured means, with respect to a door, that the lower portion of its front or rear edge is curved upward, typically to conform to a wheel well.

Double side doors means a pair of hinged doors with the lock and latch mechanisms located where the door lips overlap.

Limited line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 585.4, in the United States during a production year.

Lowered floor means the replacement floor on a motor vehicle whose original floor has been removed, in part or in total, and replaced by a floor that is lower than the original floor.

Modified roof means the replacement roof on a motor vehicle whose original roof has been removed, in part or in total.

Raised roof is used as defined in paragraph S4 of 49 CFR 571.216.

Walk-in van means a special cargo/mail delivery vehicle that has only one designated seating position. That designated seating position must be forward facing and for use only by the driver. The vehicle usually has a thin and light sliding (or folding) side door for easy operation and a high roof clearance that a person of medium stature can enter the passenger compartment area in an up-right position.

S4 *Requirements.* Subject to the exceptions of S5—

(a) *Passenger cars.* Passenger cars must meet the requirements set forth in S6 (door crush resistance), S7 (moving deformable barrier test), and S9 (vehicle-to-pole test), subject to the phased-in application of S7 and S9.

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kg or less (6,000 lb or less).* Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kg or less (6,000 lb or less) must meet the requirements set forth in S6 (door crush resistance), S7 (moving deformable barrier test), and S9 (vehicle-to-pole test), subject to the phased-in application of S7 and S9.

(c) *Multipurpose passenger vehicles, trucks and buses with a GVWR greater than 2,722 kg (6,000 lb).* Multipurpose passenger vehicles, trucks and buses with a GVWR greater than 2,722 kg (6,000 lb) must meet the requirements set forth in S6 (door crush resistance) and S9 (vehicle-to-pole test), subject to the phased-in application of S9.

S5 *General exclusions.*

(a) *Exclusions from S6 (door crush resistance).* A vehicle need not meet the requirements of S6 (door crush resistance) for—

(1) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H–point of a manikin placed in any seat, with the seat adjusted to any position and the seat back adjusted as specified in S8.4, falls within the transverse, horizontal projection of the door's opening,

(2) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H–point of a manikin placed in any seat recommended by the manufacturer for installation in a location for which seat anchorage hardware is provided, with the seat adjusted to any position and the seat back adjusted as specified in S8.3, falls within the transverse, horizontal projection of the door's opening,

(3) Any side door located so that a portion of a seat, with the seat adjusted to any position and the seat back adjusted as specified in S8.3, falls within the transverse, horizontal projection of the door's opening, but a longitudinal vertical plane tangent to the outboard side of the seat cushion is more than 254 mm (10 inches) from the innermost point on the inside surface of the door at a height between the H–point and shoulder reference point (as shown in Figure 1 of Federal Motor Vehicle Safety Standard No. 210 (49 CFR 571.210)) and longitudinally between the front edge of the cushion with the seat adjusted to its forwardmost position and the rear edge of the cushion with the seat adjusted to its rearmost position.

(4) Any side door that is designed to be easily attached to or removed (e.g., using simple hand tools such as pliers and/or a screwdriver) from a motor vehicle manufactured for operation without doors.

(b) *Exclusions from S7 (moving deformable barrier test).* The following vehicles are excluded from S7 (moving deformable barrier test):

(1) Motor homes, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), vehicles equipped with wheelchair lifts, and vehicles which have no doors or exclusively have doors that are designed to be easily attached or removed so the vehicle can be operated without doors.

(2) Passenger cars with a wheelbase greater than 130 inches need not meet the requirements of S7 as applied to the rear seat.

(3) Passenger cars, multipurpose passenger vehicles, trucks and buses need not meet the requirements of S7 (moving deformable barrier test) as applied to the rear seat for side-facing rear seats and for rear seating areas that are so small that a Part 572 Subpart V dummy representing a 5th percentile adult female cannot be accommodated according to the positioning procedure specified in S12.3.4 of this standard.

(4) Multipurpose passenger vehicles, trucks and buses with a GVWR of more than 2,722 kg (6,000 lb) need not meet the requirements of S7 (moving deformable barrier test).

(c) *Exclusions from S9 (vehicle-to-pole test).* The following vehicles are excluded from S9 (vehicle-to-pole test) (wholly or in limited part, as set forth below):

(1) Motor homes;

(2) Ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment) except police cars;

(3) Vehicles with a lowered floor or raised or modified roof and vehicles that have had the original roof rails removed and not replaced;

(4) Vehicles in which the seat for the driver or right front passenger has been removed and wheelchair restraints installed in place of the seat are excluded from meeting the vehicle-to-pole test at that position; and

(5) Vehicles that have no doors, or exclusively have doors that are designed to be easily attached or removed so that the vehicle can be operated without doors.

S6 *Door Crush Resistance Requirements.* Except as provided in section S5, each vehicle shall be able to meet the requirements of either, at the manufacturer's option, S6.1 or S6.2, when any of its side doors that can be used for occupant egress is tested according to procedures described in S6.3 of this standard (49 CFR 571.214).

S6.1 With any seats that may affect load upon or deflection of the side of the vehicle removed from the vehicle, each vehicle must be able to meet the requirements of S6.1.1 through S6.1.3.

S6.1.1 Initial crush resistance. The initial crush resistance shall not be less than 10,000 N (2,250 lb).

S6.1.2 Intermediate crush resistance. The intermediate crush resistance shall not be less than 1,557 N (3,500 lb).

S6.1.3 Peak crush resistance. The peak crush resistance shall not be less than two times the curb weight of the vehicle or 3,114 N (7,000 lb), whichever is less.

S6.2 With seats installed in the vehicle, and located in any horizontal or vertical position to which they can be adjusted and at any seat back angle to which they can be adjusted, each vehicle must be able to meet the requirements of S6.2.1 through S6.2.3.

S6.2.1 Initial crush resistance. The initial crush resistance shall not be less than 10,000 N (2,250 lb).

S6.2.2 Intermediate crush resistance. The intermediate crush resistance shall not be less than 1,946 N (4,375 lb).

S6.2.3 Peak crush resistance. The peak crush resistance shall not be less than three and one half times the curb weight of the vehicle or 5,338 N (12,000 lb), whichever is less.

S6.3 *Test procedures for door crush resistance.* The following procedures apply to determining compliance with S6.1 and S6.2 of S6, *Door crush resistance requirements.*

(a) Place side windows in their uppermost position and all doors in locked position. Place the sill of the side of the vehicle opposite to the side being tested against a rigid unyielding vertical surface. Fix the vehicle rigidly in position by means of tiedown attachments located at or forward of the front wheel centerline and at or rearward of the rear wheel centerline.

(b) Prepare a loading device consisting of a rigid steel cylinder or semi-cylinder 305 mm (12 inches) in diameter with an edge radius of 13 mm (½ inch). The length of the loading device shall be such that—

(1) For doors with windows, the top surface of the loading device is at least 13 mm (½ inch) above the bottom edge of the door window opening but not of a length that will cause contact with any structure above the bottom edge of the door window opening during the test.

(2) For doors without windows, the top surface of the loading device is at the same height above the ground as when the loading device is positioned in accordance with paragraph (b)(1) of this section for purposes of testing a front door with windows on the same vehicle.

(c) Locate the loading device as shown in Figure 1 (side view) of this section so that—

(1) Its longitudinal axis is vertical.

(2) Except as provided in paragraphs (c)(2)(i) and (ii) of this section, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the outer surface of the door 127 mm (5 inches) above the lowest point of the door, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(i) For contoured doors on trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less, if the length of the horizontal line specified in this paragraph (c)(2) is not equal to or greater than 559 mm (22 inches), the line is moved vertically up the side of the door to the point at which the line is 559 mm (22 inches) long. The longitudinal axis of the loading device is then located laterally opposite the midpoint of that line.

(ii) For double side doors on trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the outer surface of the double door span, 127 mm (5 inches) above the lowest point on the doors, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(3) Except as provided in paragraphs (c)(3)(i) and (ii) of this section, its bottom surface is in the same horizontal plane as the horizontal line drawn across the outer surface of the door 127 mm (5 inches) above the lowest point of the door, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(i) For contoured doors on trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less, its bottom surface is in the lowest horizontal plane such that every point on the lateral projection of the bottom surface of the device on the door is at least 127 mm (5 inches), horizontally and vertically, from any edge of the door panel, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(ii) For double side doors, its bottom surface is in the same horizontal plane as a horizontal line drawn across the outer surface of the double door span, 127 mm (5 inches) above the lowest point of the doors, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(d) Using the loading device, apply a load to the outer surface of the door in an inboard direction normal to a vertical plane along the vehicle's longitudinal centerline. Apply the load continuously such that the loading device travel rate does not exceed 12.7 mm (0.5 inch) per second until the loading device travels 457 mm (18 inches). Guide the loading device to prevent it from being rotated or displaced from its direction of travel. The test is completed within 120 seconds.

(e) Record applied load versus displacement of the loading device, either continuously or in increments of not more than 25.4 mm (1 inch) or 91 kg (200 pounds) for the entire crush distance of 457 mm (18 inches).

(f) Determine the initial crush resistance, intermediate crush resistance, and peak crush resistance as follows:

(1) From the results recorded in paragraph (e) of this section, plot a curve of load versus displacement and obtain the integral of the applied load with respect to the crush distances specified in paragraphs (f)(2) and (3) of this section. These quantities, expressed in mm-kN (inch-pounds) and divided by the specified crush distances, represent the average forces in kN (pounds) required to deflect the door those distances.

(2) The initial crush resistance is the average force required to deform the door over the initial 152 mm (6 inches) of crush.

(3) The intermediate crush resistance is the average force required to deform the door over the initial 305 mm (12 inches) of crush.

(4) The peak crush resistance is the largest force recorded over the entire 457 mm (18-inch) crush distance.

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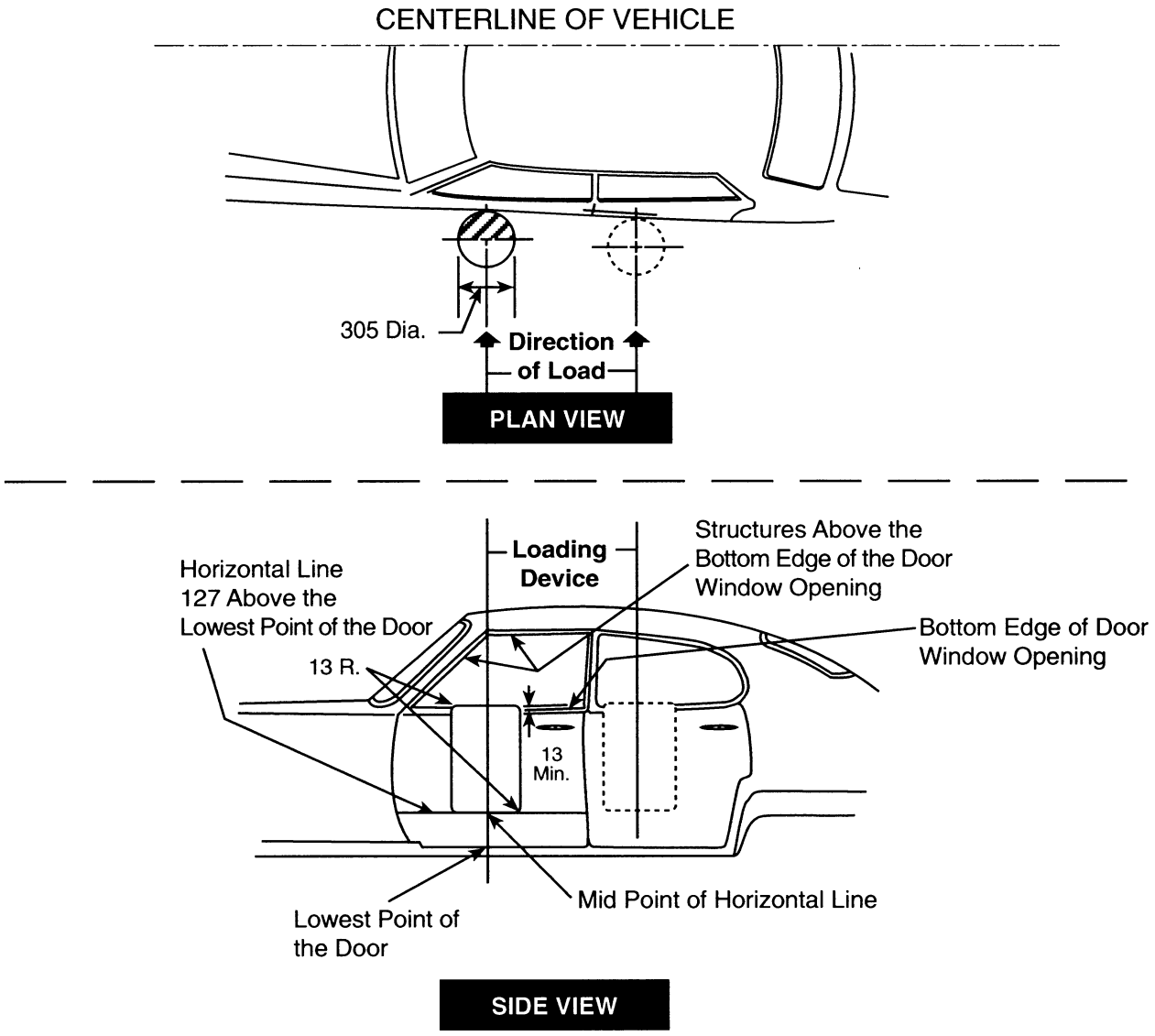

Figure 1—LOADING DEVICE LOCATION AND APPLICATION TO THE DOOR

All dimensions in millimeters (mm)

S7 *Moving Deformable Barrier (MDB) Requirements.* Except as provided in section S5, when tested under the conditions of S8 each vehicle shall meet S7.3 and the following requirements in a 53 ± 1.0 km/h (33.5 mph) impact in which the vehicle is struck on either side by a moving deformable barrier.

S7.1 *MDB test with SID.* For vehicles manufactured before September 1, 2009, the following requirements must be met. The following requirements also apply to vehicles manufactured on or after September 1, 2009 that are not part of the percentage of a manufacturer's production meeting the MDB test with advanced test dummies (S7.2 of this section) or are otherwise excluded from the phase-in requirements of S7.2. (Vehicles manufactured before September 1, 2009 may meet S7.2, at the manufacturer's option.)

S7.1.1 The test dummy specified in 49 CFR Part 572 Subpart F (SID) is placed in the front and rear outboard seating positions on the struck side of the vehicle, as specified in S11 and S12 of this standard (49 CFR 571.214).

S7.1.2 When using the Part 572 Subpart F dummy (SID), the following performance requirements must be met.

(a) *Thorax.* The Thoracic Trauma Index (TTI(d)) shall not exceed:

(1) 85 g for a passenger car with four side doors, and for any multipurpose passenger vehicle, truck, or bus; and,

(2) 90 g for a passenger car with two side doors, when calculated in accordance with the following formula: $TI(d) = \frac{1}{2}(G_R + G_{LS})$

Where the term ''G_R'' is the greater of the peak accelerations of either the upper or lower rib, expressed in g's and the term ''G_{LS}'' is the lower spine (T12) peak acceleration, expressed in g's. The peak acceleration values are obtained in accordance with the procedure specified in S11.5.

(b) *Pelvis.* The peak lateral acceleration of the pelvis, as measured in accordance with S11.5, shall not exceed 130 g's.

S7.2 *MDB test with advanced test dummies.*

S7.2.1 *Vehicles manufactured on or after September 1, 2009 to August 31, 2012.*

(a) Except as provided in S7.2.4 of this section, for vehicles manufactured on or after September 1, 2009 to August 31, 2012, a percentage of each manufacturer's production, as specified in S13.1.1, S13.1.2, and S13.1.3, shall meet the requirements of S7.2.5 and S7.2.6 when tested with the test dummy specified in those sections. Vehicles manufactured before September 1, 2012 may be certified as meeting the requirements of S7.2.5 and S7.2.6.

(b) For vehicles manufactured on or after September 1, 2009 that are not part of the percentage of a manufacturer's production meeting S7.2.1 of this section, the requirements of S7.1 of this section must be met.

(c) Place the Subpart U ES–2re 50th percentile male dummy in the front seat and the Subpart V SID–IIs 5th percentile female test dummy in the rear seat. The test dummies are placed and positioned in the front and rear outboard seating positions on the struck side of the vehicle, as specified in S11 and S12 of this standard (49 CFR 571.214).

S7.2.2 *Vehicles manufactured on or after September 1, 2012.*

(a) Subject to S7.2.4 of this section, each vehicle manufactured on or after September 1, 2012 must meet the requirements of S7.2.5 and S7.2.6, when tested with the test dummy specified in those sections.

(b) Place the Subpart U ES–2re 50th percentile male dummy in the front seat and the Subpart V SID–IIs 5th percentile female test dummy in the rear seat. The test dummies are placed and positioned in the front and rear outboard seating positions on the struck side of the vehicle, as specified in S11 and S12 of this standard (49 CFR 571.214).

S7.2.3 [Reserved]

S7.2.4 *Exceptions from the MDB phase-in; special allowances.*

(a)(1) Vehicles that are manufactured on or after September 1, 2012 by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to S7.2.1 of this section (but are subject to S7.2.2);

(2) Vehicles that are manufactured on or after September 1, 2012 by a limited line manufacturer are not subject to S7.2.1 of this section (but are subject to S7.2.2).

(b) Vehicles that are altered (within the meaning of 49 CFR 567.7) before September 1, 2013 after having been previously certified in accordance with part 567 of this chapter, and vehicles manufactured in two or more stages before September 1, 2013, are not subject to S7.2.1. Vehicles that are altered on or after September 1, 2013, and vehicles that are manufactured in two or more stages on or after September 1, 2013, must meet the requirements of S7.2.5 and S7.2.6, when tested with the test dummy specified in those sections. Place the Subpart U ES–2re 50th percentile male dummy in the front seat and the Subpart V SID–IIs 5th percentile female test dummy in the rear seat. The test dummies are placed and positioned in the front and rear outboard seating positions on the struck side of the vehicle, as specified in S11 and S12 of this standard (49 CFR 571.214).

S7.2.5 *Dynamic performance requirements using the Part 572 Subpart U dummy (ES–2re 50th percentile male) dummy.* Use the 49 CFR Part 572 Subpart U ES–2re dummy specified in S11 with measurements in accordance with S11.5. The following criteria shall be met:

(a) The HIC shall not exceed 1000 when calculated in accordance with the following formula:

$$HIC = [\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a dt]^{2.5} (t_2 - t_1)$$

Where the term *a* is the resultant head acceleration at the center of gravity of the dummy head expressed as a multiple of *g* (the acceleration of gravity), and t1 and t2 are any two points in time during the impact which are separated by not more than a 36 millisecond time interval and where t1 is less than t2.

(b) Thorax. The deflection of any of the upper, middle, and lower ribs, shall not exceed 44 mm (1.65 inches).

(c) Force measurements.

(1) The sum of the front, middle and rear abdominal forces, shall not exceed 2,500 N (562 lb).

(2) The pubic symphysis force shall not exceed 6,000 N (1,350 pounds).

S7.2.6 *Dynamic performance requirements using the Part 572 Subpart V SID–IIs (5th percentile female) dummy.* Use the 49 CFR Part 572 Subpart V SID–IIs 5th percentile female dummy specified in S11 with measurements in accordance with S11.5. The following criteria shall be met:

(a) The HIC shall not exceed 1000 when calculated in accordance with the following formula:

$$HIC = [\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a dt]^{2.5} (t_2 - t_1)$$

Where the term *a* is the resultant head acceleration expressed as a multiple of *g* (the acceleration of gravity), and t1 and t2 are any two points in time during the impact which are separated by not more than a 36 millisecond time interval.

(b) The resultant lower spine acceleration shall not exceed 82 g.

(c) The sum of the acetabular and iliac pelvic forces shall not exceed 5,525 N.

S7.3 *Door opening.*

(a) Any side door that is struck by the moving deformable barrier shall not separate totally from the vehicle.

(b) Any door (including a rear hatchback or tailgate) that is not struck by the moving deformable barrier shall meet the following requirements:

(1) The door shall not disengage from the latched position;

(2) The latch shall not separate from the striker, and the hinge components shall not separate from each other or from their attachment to the vehicle.

(3) Neither the latch nor the hinge systems of the door shall pull out of their anchorages.

S8 *Test conditions for determining compliance with moving deformable barrier requirements.* General test conditions for determining compliance with the moving deformable barrier test are specified below. Additional specifications may also be found in S12 of this standard (49 CFR 571.214).

S8.1 *Test weight.* Each vehicle is loaded to its unloaded vehicle weight, plus 136 kg (300 pounds) or its rated cargo and luggage capacity (whichever is less), secured in the luggage or load-carrying area, plus the weight of the necessary anthropomorphic test dummies. Any added test equipment is located away from impact areas in secure places in the vehicle. The vehicle's fuel system is filled in accordance with the following procedure. With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount that is equal to not less than 92 percent and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

S8.2 *Vehicle test attitude.* Determine the distance between a level surface and a standard reference point on the test vehicle's body, directly above each wheel opening, when the vehicle is in its ''as delivered'' condition. The ''as delivered'' condition is the vehicle as received at the test site, filled to 100

percent of all fluid capacities and with all tires inflated to the manufacturer's specifications listed on the vehicle's tire placard. Determine the distance between the same level surface and the same standard reference points in the vehicle's ''fully loaded condition.'' The ''fully loaded condition'' is the test vehicle loaded in accordance with S8.1 of this standard (49 CFR 571.214). The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The pretest vehicle attitude is equal to either the as delivered or fully loaded attitude or between the as delivered attitude and the fully loaded attitude, +/−10 mm.

S8.3 *Adjustable seats.*

S8.3.1 *50th Percentile Male Dummy In Front Seats.*

S8.3.1.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S8.3.1.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or non-deployed adjustment position. Position any adjustable head restraint in the highest and most forward position. Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. If the position is not specified, set the seat back at the first detent rearward of 25° from the vertical.

S8.3.1.3 *Seat position adjustment.* If the passenger seat does not adjust independently of the driver seat, the driver seat shall control the final position of the passenger seat.

S8.3.1.3.1 Using only the controls that primarily move the seat and seat cushion independent of the seat back in the fore and aft directions, move the seat cushion reference point (SCRP) to the rearmost position. Using any part of any control, other than those just used, determine the full range of angles of the seat cushion reference line and set the seat cushion reference line to the middle of the range. Using any part of any control other than those that primarily move the seat or seat cushion fore and aft, while maintaining the seat cushion reference line angle, place the SCRP to its lowest position.

S8.3.1.3.2 Using only the control that primarily moves the seat fore and aft, move the seat cushion reference point to the mid travel position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

S8.3.1.3.3 If the seat or seat cushion height is adjustable, other than by the controls that primarily move the seat or seat cushion fore and aft, set the height of the seat cushion reference point to the minimum height, with the seat cushion reference line angle set as closely as possible to the angle determined in S8.3.1.3.1. Mark location of the seat for future reference.

S8.3.2 [Reserved]

S8.3.3 *5th Percentile Female Dummy in Second Row Seat.*

S8.3.3.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S8.3.3.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or non-deployed adjustment position. Position any adjustable head restraint in the lowest and most forward position. Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. If the position is not specified, set the seat back at the first detent rearward of 25° from the vertical.

S8.3.3.3 *Seat position adjustment.* Using only the controls that primarily move the seat and seat cushion independent of the seat back in the fore and aft directions, move the seat cushion reference point (SCRP) to the rearmost position. Using any part of any control, other than those just used, determine the full range of angles of the seat cushion reference line and set the seat cushion reference line to the middle of the range. Using any part of any control other than those that primarily move the seat or seat cushion fore and aft, while maintaining the seat cushion reference line angle, place the SCRP to its lowest position. Mark location of the seat for future reference.

S8.4 *Adjustable steering wheel.* Adjustable steering controls are adjusted so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting detent in the mid-position, lower the steering wheel to the detent just below the mid-position. If the steering column is telescoping, place the steering column in the mid-position. If there is no mid-position, move the steering wheel rearward one position from the mid-position.

S8.5 *Windows and sunroofs.* Movable vehicle windows and vents are placed in the fully closed position on the struck side of the vehicle. Any sunroof shall be placed in the fully closed position.

S8.6 *Convertible tops.* Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S8.7 *Doors.* Doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

S8.8 *Transmission and brake engagement.* For a vehicle equipped with a manual transmission, the transmission is placed in second gear. For a vehicle equipped with an automatic transmission, the transmission is placed in neutral. For all vehicles, the parking brake is engaged.

S8.9 *Moving deformable barrier.* The moving deformable barrier conforms to the dimensions shown in Figure 2 and specified in 49 CFR Part 587.

S8.10 *Impact configuration.* The test vehicle (vehicle A in Figure 3) is stationary. The line of forward motion of the moving deformable barrier (vehicle B in Figure 3) forms an angle of 63 degrees with the centerline of the test vehicle. The longitudinal centerline of the moving deformable barrier is perpendicular to the longitudinal centerline of the test vehicle when the barrier strikes the test vehicle. In a test in which the test vehicle is to be struck on its left (right) side: All wheels of the moving deformable barrier are positioned at an angle of 27 ± 1 degrees to the right (left) of the centerline of the moving deformable barrier; and the left (right) forward edge of the moving deformable barrier is aligned so that a longitudinal plane tangent to that side passes through the impact reference line within a tolerance of ± 51 mm (2 inches) when the barrier strikes the test vehicle.

S8.11 *Impact reference line.* Place a vertical reference line at the location described below on the side of the vehicle that will be struck by the moving deformable barrier.

S8.11.1 *Passenger cars.*

(a) For vehicles with a wheelbase of 2,896 mm (114 inches) or less, 940 mm (37 inches) forward of the center of the vehicle's wheelbase.

(b) For vehicles with a wheelbase greater than 2,896 mm (114 inches), 508 mm (20 inches) rearward of the centerline of the vehicle's front axle.

S8.11.2 *Multipurpose passenger vehicles, trucks and buses.*

(a) For vehicles with a wheelbase of 2,489 mm (98 inches) or less, 305 mm (12 inches) rearward of the centerline of the vehicle's front axle, except as otherwise specified in paragraph (d) of this section.

(b) For vehicles with a wheelbase of greater than 2,489 mm (98 inches) but not greater than 2,896 mm (114 inches), 940 mm (37 inches) forward of the center of the vehicle's wheelbase, except

as otherwise specified in paragraph (d) of this section.

(c) For vehicles with a wheelbase greater than 2,896 mm (114 inches), 508 mm (20 inches) rearward of the centerline of the vehicle's front axle, except as otherwise specified in paragraph (d) of this section.

(d) At the manufacturer's option, for different wheelbase versions of the same model vehicle, the impact reference line may be located by the following:

(1) Select the shortest wheelbase vehicle of the different wheelbase versions of the same model and locate on it the impact reference line at the location described in (a), (b) or (c) of this section, as appropriate;

(2) Measure the distance between the seating reference point (SgRP) and the impact reference line;

(3) Maintain the same distance between the SgRP and the impact reference line for the version being tested as that between the SgRP and the impact reference line for the shortest wheelbase version of the model.

(e) For the compliance test, the impact reference line will be located using the procedure used by the manufacturer as the basis for its certification of compliance with the requirements of this standard. If the manufacturer did not use any of the procedures in this section, or does not specify a procedure when asked by the agency, the agency may locate the impact reference line using either procedure.

S8.12 *Anthropomorphic test dummies.* The anthropomorphic test dummies used to evaluate a vehicle's performance in the moving deformable barrier test conform to the requirements of S11 and are positioned as described in S12 of this standard (49 CFR 571.214).

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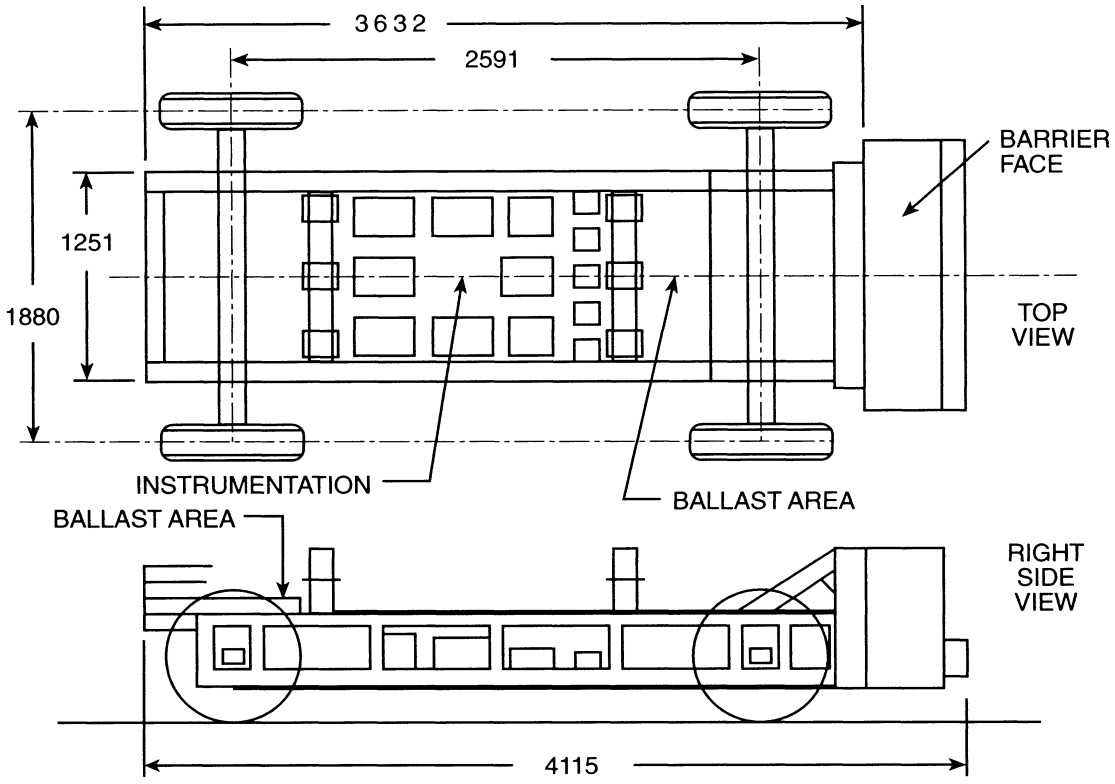

NHTSA VEHICLE SIMULATOR
All dimensions in millimeters (mm)

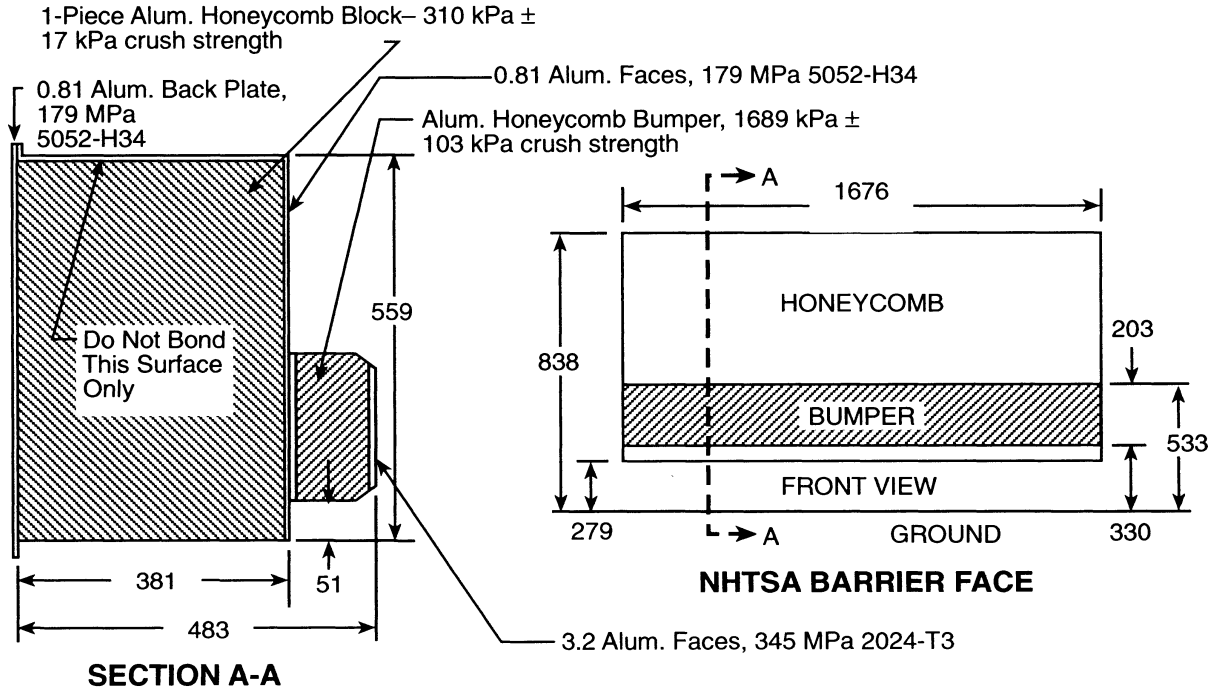

Figure 2—NHTSA SIDE IMPACTOR – MOVING DEFORMABLE BARRIER
All dimensions in millimeters (mm)

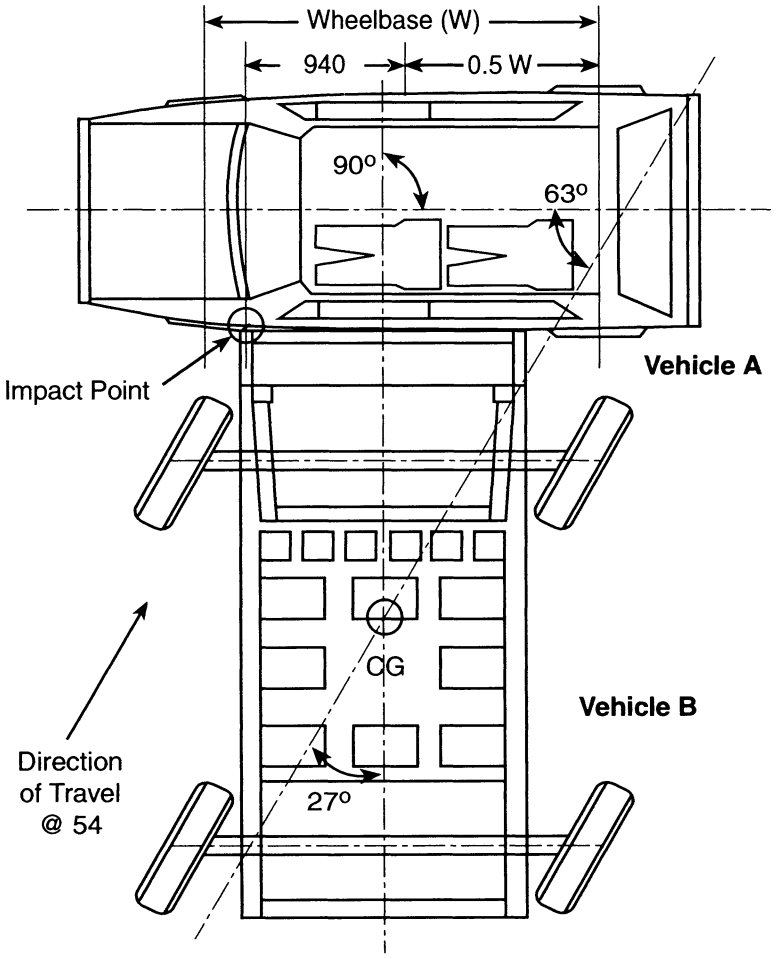

Figure 3—TEST CONFIGURATION
All dimensions in millimeters (mm)
velocity in km/h

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S9 *Vehicle-to-Pole Requirements.*

S9.1 Except as provided in S5, when tested under the conditions of S10:

S9.1.1 Except as provided in S9.1.3 of this section, for vehicles manufactured on or after September 1, 2009 to August 31, 2012, a percentage of each manufacturer's production, as specified in S13.1.1, S13.1.2, and S13.1.3, shall meet the requirements of S9.2.1, S9.2.2, and S9.2.3 when tested under the conditions of S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any velocity up to and including 32 km/h (20 mph). Vehicles manufactured before September 1, 2012 that are not subject to the phase-in may be certified as meeting the requirements specified in this section.

S9.1.2 Except as provided in S9.1.3 of this section, each vehicle manufactured on or after September 1, 2012, must meet the requirements of S9.2.1, S9.2.2 and S9.2.3, when tested under the conditions specified in S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph).

S9.1.3 *Exceptions from the phase-in; special allowances.*

(a)(1) Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to S9.1.1 of this section (but are subject to S9.1.2);

(2) Vehicles that are manufactured by a limited line manufacturer are not subject to S9.1.1 of this section (but are subject to S9.1.2).

(b) Vehicles that are altered (within the meaning of 49 CFR 567.7) before September 1, 2013 after having been previously certified in accordance with part 567 of this chapter, and vehicles manufactured in two or more stages before September 1, 2013, are not subject to S9.1.1. Vehicles that are altered on or after September 1, 2013, and vehicles that are manufactured in two or more stages on or after September 1, 2013, must meet the requirements of S9, when tested under the conditions specified in S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph).

(c) Vehicles with a gross vehicle weight rating greater than 3,855 kg (8,500 lb) manufactured before September 1, 2013 are not subject to S9.1.1 or S9.1.2 of this section. These vehicles may be voluntarily certified to meet the pole test requirements prior to September 1, 2013. Vehicles with a gross vehicle weight rating greater than 3,855 kg (8,500 lb) manufactured on or after September 1, 2013 must meet the requirements of S9.2.1, S9.2.2 and S9.2.3, when tested under the conditions specified in S10 into a fixed,

rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph).

S9.2 *Requirements.* Each vehicle shall meet these vehicle-to-pole test requirements when tested under the conditions of S10 of this standard. At NHTSA's option, either the 50th percentile adult male test dummy (ES–2re dummy, 49 CFR Part 572 Subpart U) or the 5th percentile adult female test dummy (SID–IIs, 49 CFR Part 572 Subpart V) shall be used in the test. At NHTSA's option, either front outboard seating position shall be tested. The vehicle shall meet the specific requirements at all front outboard seating positions.

S9.2.1 *Dynamic performance requirements using the Part 572 Subpart U (ES–2re 50th percentile male) dummy.* When using the ES–2re Part 572 Subpart U dummy, use the specifications of S11 of this standard (49 CFR 571.214). When using the dummy, the following performance requirements must be met using measurements in accordance with S11.5.

(a) The HIC shall not exceed 1000 when calculated in accordance with the following formula:

$$HIC = [\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} adt]^{2.5}(t_2 - t_1)$$

Where the term *a* is the resultant head acceleration at the center of gravity of the dummy head expressed as a multiple of g (the acceleration of gravity), and t1 and t2 are any two points in time during the impact which are separated by not more than a 36 millisecond time interval and where t1 is less than t2.

(b) Thorax. The deflection of any of the upper, middle, and lower ribs, shall not exceed 44 mm (1.65 inches).

(c) Force measurements.

(1) The sum of the front, middle and rear abdominal forces, shall not exceed 2,500 N (562 pounds).

(2) The pubic symphysis force shall not exceed 6,000 N (1,350 pounds).

S9.2.2 *Dynamic performance requirements using the Part 572 Subpart V SID–IIs (5th percentile female) dummy.* When using the SID–IIs Part 572 Subpart V dummy, use the specifications of S11 of this standard (49 CFR 571.214). When using the dummy, the following performance requirements must be met.

(a) The HIC shall not exceed 1000 when calculated in accordance with the following formula:

$$HIC = [\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} adt]^{2.5}(t_2 - t_1)$$

Where the term *a* is the resultant head acceleration at the center of gravity of the dummy head expressed as a multiple of g (the acceleration of gravity), and t1 and t2 are any two points in time during the impact which are separated by not more than a 36 millisecond time interval and where t1 is less than t2.

(b) Resultant lower spine acceleration must not exceed 82 g.

(c) The sum of the acetabular and iliac pelvic forces must not exceed 5,525 N.

S9.2.3 *Door opening.*

(a) Any side door that is struck by the pole shall not separate totally from the vehicle.

(b) Any door (including a rear hatchback or tailgate) that is not struck by the pole shall meet the following requirements:

(1) The door shall not disengage from the latched position; and

(2) The latch shall not separate from the striker, and the hinge components shall not separate from each other or from their attachment to the vehicle.

(3) Neither the latch nor the hinge systems of the door shall pull out of their anchorages.

S10. *General test conditions for determining compliance with vehicle-to-pole requirements.* General test conditions for determining compliance with the vehicle-to-pole test are specified below and in S12 of this standard (49 CFR 571.214).

S10.1 *Test weight.* Each vehicle is loaded as specified in S8.1 of this standard (49 CFR 571.214).

S10.2 *Vehicle test attitude.* When the vehicle is in its ''as delivered,'' ''fully loaded'' and ''as tested'' condition, locate the vehicle on a flat, horizontal surface to determine the vehicle attitude. Use the same level surface or reference plane and the same standard points on the test vehicle when determining the ''as delivered,'' ''fully loaded'' and ''as tested'' conditions. Measure the angles relative to a horizontal plane, front-to-rear and from left-to-right for the ''as delivered,'' ''fully loaded,'' and ''as tested'' conditions. The front-to-rear angle (pitch) is measured along a fixed reference on the driver's and front passenger's door sill. Mark where the angles are taken on the door sill. The left to right angle (roll) is measured along a fixed reference point at the front and rear of the vehicle at the vehicle longitudinal center plane. Mark where the angles are measured. The ''as delivered'' condition is the vehicle as received at the test site, with 100 percent of all fluid capacities and all tires inflated to the manufacturer's specifications listed on the vehicle's tire placard. When the vehicle is in its ''fully loaded'' condition, measure the angle between the driver's door sill and the horizontal, at the same place the ''as delivered'' angle was measured. The ''fully loaded condition'' is the test vehicle loaded in accordance with S8.1 of this standard (49 CFR 571.214). The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The vehicle ''as tested'' pitch and roll angles are between the ''as delivered'' and ''fully loaded'' condition, inclusive.

S10.3 *Adjustable seats.*

S10.3.1 *Driver and front passenger seat set-up for 50th percentile male dummy.* The driver and front passenger seats are set up as specified in S8.3.1 of this standard, 49 CFR 571.214.

S10.3.2. *Driver and front passenger seat set-up for 49 CFR Part 572 Subpart V 5th percentile female dummy.*

S10.3.2.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S10.3.2.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or non-deployed adjustment position. Position any adjustable head restraint in the lowest and most forward position. Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. If the position is not specified, set the seat back at the first detent rearward of 25° from the vertical.

S10.3.2.3 *Seat position adjustment.* If the passenger seat does not adjust independently of the driver seat, the driver seat controls the final position of the passenger seat.

S10.3.2.3.1 Using only the controls that primarily move the seat and seat cushion independent of the seat back in the fore and aft directions, move the seat cushion reference point (SCRP) to the rearmost position. Using any part of any control, other than those just used, determine the full range of angles of the seat cushion reference line and set the seat cushion reference line to the middle of the range. Using any part of any control other than those that primarily move the seat or seat cushion fore and aft, while maintaining the seat cushion reference line angle, place the SCRP to its lowest position.

S10.3.2.3.2 Using only the control that primarily moves the seat fore and

aft, move the seat reference point to the most forward position.

S10.3.2.3.3 If the seat or seat cushion height is adjustable, other than by the controls that primarily move the seat or seat cushion fore and aft, set the seat reference point to the midpoint height, with the seat cushion reference line angle set as close as possible to the angle determined in S10.3.2.3.1. Mark location of the seat for future reference.

S10.4 *Positioning dummies for the vehicle-to-pole test.*

(a) 50th percentile male test dummy (49 CFR Part 572 Subpart U ES–2re dummy). The 50th percentile male test dummy is positioned in the front outboard seating position on the struck side of the vehicle in accordance with the provisions of S12.2 of this standard, 49 CFR 571.214.

(b) 5th percentile female test dummy (49 CFR Part 572 Subpart V SID–IIs dummy). The 5th percentile female test dummy is positioned in the front outboard seating positions on the struck side of the vehicle in accordance with the provisions of S12.3 of this standard, 49 CFR 571.214.

S10.5 *Adjustable steering wheel.* Adjustable steering controls are adjusted so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting detent in the mid-position, lower the steering wheel to the detent just below the mid-position.

S10.6 *Windows and sunroofs.* Movable vehicle windows and vents are placed in the fully closed position on the struck side of the vehicle. Any sunroof is placed in the fully closed position.

S10.7 *Convertible tops.* Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S10.8 *Doors.* Doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

S10.9 *Transmission and brake engagement.* For a vehicle equipped with a manual transmission, the transmission is placed in second gear. For a vehicle equipped with an automatic transmission, the transmission is placed in neutral. For all vehicles, the parking brake is engaged.

S10.10 *Rigid pole.* The rigid pole is a vertical metal structure beginning no more than 102 millimeters (4 inches) above the lowest point of the tires on the striking side of the test vehicle when the vehicle is loaded as specified in S8.1 and extending above the highest point of the roof of the test vehicle. The pole is 254 mm (10 inches) ± 6 mm (0.25 in) in diameter and set off from any mounting surface, such as a barrier or other structure, so that the test vehicle will not contact such a mount or support at any time within 100 milliseconds of the initiation of vehicle to pole contact.

S10.11 *Impact reference line.* The impact reference line is located on the striking side of the vehicle at the intersection of the vehicle exterior and a vertical plane passing through the center of gravity of the head of the dummy seated in accordance with S12 in the front outboard designated seating position. The vertical plane forms an angle of 285 (or 75) degrees with the vehicle's longitudinal centerline for the right (or left) side impact test. The angle is measured counterclockwise from the vehicle's positive X-axis as defined in S10.13.

S10.12 *Impact configuration.*

S10.12.1 The rigid pole is stationary.

S10.12.2 The test vehicle is propelled sideways so that its line of forward motion forms an angle of 285 (or 75) degrees (±3 degrees) for the right (or left) side impact with the vehicle's longitudinal centerline. The angle is measured counterclockwise from the vehicle's positive X-axis as defined in S10.13. The impact reference line is aligned with the center line of the rigid pole surface, as viewed in the direction of vehicle motion, so that, when the vehicle-to-pole contact occurs, the center line contacts the vehicle area bounded by two vertical planes parallel to and 38 mm (1.5 inches) forward and aft of the impact reference line.

S10.13 *Vehicle reference coordinate system.* The vehicle reference coordinate system is an orthogonal coordinate system consisting of three axes, a longitudinal axis (X), a transverse axis (Y), and a vertical axis (Z). X and Y are in the same horizontal plane and Z passes through the intersection of X and Y. The origin of the system is at the center of gravity of the vehicle. The X-axis is parallel to the longitudinal centerline of the vehicle and is positive to the vehicle front end and negative to the rear end. The Y-axis is positive to the left side of the vehicle and negative to the right side. The Z-axis is positive above the X-Y plane and negative below it.

S11 *Anthropomorphic test dummies.* The anthropomorphic test dummies used to evaluate a vehicle's performance in the moving deformable barrier and vehicle-to-pole tests are specified in 49 CFR part 572. In a test in which the test vehicle is to be struck on its left side, each dummy is to be configured and instrumented to be struck on its left side, in accordance with part 572. In a test in which the test vehicle is to be struck on its right side, each dummy is to be configured and instrumented to be struck on its right side, in accordance with part 572.

S11.1 *Clothing.*

(a) *50th percentile male.* Each test dummy representing a 50th percentile male is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants. Each foot of the test dummy is equipped with a size 11EEE shoe, which meets the configuration size, sole, and heel thickness specifications of MIL–S–13192 (1976) and weighs 0.68 ± 0.09 kilograms (1.25 ± 0.2 lb).

(b) *5th percentile female.* The 49 CFR Part 572 Subpart V test dummy representing a 5th percentile female is clothed in formfitting cotton stretch garments with short sleeves and about the knee length pants. Each foot has on a size 7.5W shoe that meets the configuration and size specifications of MIL–S–2171E or its equivalent.

S11.2 *Limb joints.*

(a) For the 50th percentile male dummy, set the limb joints at between 1 and 2 g. Adjust the leg joints with the torso in the supine position. Adjust the knee and ankle joints so that they just support the lower leg and the foot when extended horizontally (1 to 2 g adjustment).

(b) For the 49 CFR Part 572 Subpart V 5th percentile female dummy, set the limb joints at slightly above 1 g, barely restraining the weight of the limb when extended horizontally. The force needed to move a limb segment does not exceed 2 g throughout the range of limb motion. Adjust the leg joints with the torso in the supine position.

S11.3 The stabilized temperature of the test dummy at the time of the test is at any temperature between 20.6 degrees C and 22.2 degrees C.

S11.4 *Acceleration data.* Accelerometers are installed on the head, rib, spine and pelvis components of various dummies as required to meet the injury criteria of the standard. Accelerations measured from different dummy components may use different filters and processing methods.

S11.5 *Processing Data.*

(a) *Subpart F (SID) test dummy.*

(1) Process the acceleration data from the accelerometers mounted on the ribs, spine and pelvis of the Subpart F dummy with the FIR100 software specified in 49 CFR 572.44(d). Process the data in the following manner:

(i) Filter the data with a 300 Hz, SAE Class 180 filter;

(ii) Subsample the data to a 1600 Hz sampling rate;

(iii) Remove the bias from the subsampled data; and

(iv) Filter the data with the FIR100 software specified in 49 CFR 572.44(d), which has the following characteristics—

(A) Passband frequency 100 Hz.

(B) Stopband frequency 189 Hz.

(C) Stopband gain −50 db.

(D) Passband ripple 0.0225 db.

(2) [Reserved.]

(b) *Subpart U (ES–2re 50th percentile male) test dummy.*

(1) The rib deflection data are filtered at channel frequency class 600 Hz. Abdominal and pubic force data are filtered at channel frequency class of 600 Hz.

(2) The acceleration data from the accelerometers installed inside the skull cavity of the ES–2re test dummy are filtered at channel frequency class of 1000 Hz.

(c) *Subpart V (SID–IIs 5th percentile female) test dummy.*

(1) The acceleration data from the accelerometers installed inside the skull cavity of the SID–IIs test dummy are filtered at channel frequency class of 1000 Hz.

(2) The acceleration data from the accelerometers installed on the lower spine of the SID–IIs test dummy are filtered at channel frequency class of 180 Hz.

(3) The iliac and acetabular forces from load cells installed in the pelvis of the SID–IIs are filtered at channel frequency class of 600 Hz.

S12 *Positioning procedures for the anthropomorphic test dummies.*

S12.1 *50th percentile male test dummy—49 CFR Part 572 Subpart F (SID).* Position a correctly configured test dummy, conforming to the applicable requirements of part 572 Subpart F of this chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier and, if the vehicle has a second seat, position another conforming test dummy in the second seat outboard position on the same side of the vehicle, as specified in S12.1.3. Each test dummy is restrained using all available belt systems in all seating positions where such belt restraints are provided. Adjustable belt anchorages are placed at the mid-adjustment position. In addition, any folding armrest is retracted. Additional positioning procedures are specified below.

S12.1.1 *Positioning a Part 572 Subpart F (SID) dummy in the driver position.*

(a) *Torso.* Hold the dummy's head in place and push laterally on the non-impacted side of the upper torso in a single stroke with a force of 66.7–89.0 N (15–20 lb) towards the impacted side.

(1) For a bench seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and passes through the center of the steering wheel.

(2) For a bucket seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket seat.

(b) *Pelvis.*

(1) H–point. The H–points of each test dummy coincide within 12.7 mm (½ inch) in the vertical dimension and 12.7 mm (½ inch) in the horizontal dimension of a point that is located 6.4 mm (¼ inch) below the position of the H–point determined by using the equipment for the 50th percentile and procedures specified in SAE J826 (1980) (incorporated by reference; see 49 CFR 571.5), except that Table 1 of SAE J826 is not applicable. The length of the lower leg and thigh segments of the H–point machine are adjusted to 414 and 401 mm (16.3 and 15.8 inches), respectively.

(2) Pelvic angle. As determined using the pelvic angle gauge (GM drawing 78051–532 incorporated by reference in part 572, Subpart E of this chapter) which is inserted into the H–point gauging hole of the dummy, the angle of the plane of the surface on the lumbar-pelvic adaptor on which the lumbar spine attaches is 23 to 25 degrees from the horizontal, sloping upward toward the front of the vehicle.

(3) *Legs.* The upper legs of each test dummy rest against the seat cushion to the extent permitted by placement of the feet. The left knee of the dummy is positioned such that the distance from the outer surface of the knee pivot bolt to the dummy's midsagittal plane is 152.4 mm (6.0 inches). To the extent practicable, the left leg of the test dummy is in a vertical longitudinal plane.

(4) *Feet.* The right foot of the test dummy rests on the undepressed accelerator with the heel resting as far forward as possible on the floorpan. The left foot is set perpendicular to the lower leg with the heel resting on the floorpan in the same lateral line as the right heel.

S12.1.2 *Positioning a Part 572 Subpart F (SID) dummy in the front outboard seating position.*

(a) *Torso.* Hold the dummy's head in place and push laterally on the non-impacted side of the upper torso in a single stroke with a force of 66.7–89.0 N (15–20 lb) towards the impacted side.

(1) For a bench seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and the same distance from the vehicle's longitudinal centerline as would be the midsagittal plane of a test dummy positioned in the driver position under S12.1.1(a)(1).

(2) For a bucket seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket seat.

(b) *Pelvis.*

(1) H–point. The H–points of each test dummy coincide within 12.7 mm (½ inch) in the vertical dimension and 12.7 mm (½ inch) in the horizontal dimension of a point that is located 6.4 mm (¼ inch) below the position of the H–point determined by using the equipment for the 50th percentile and procedures specified in SAE J826 (1980) (incorporated by reference; see 49 CFR 571.5), except that Table 1 of SAE J826 is not applicable. The length of the lower leg and thigh segments of the H–point machine are adjusted to 414 and 401 mm (16.3 and 15.8 inches), respectively.

(2) Pelvic angle. As determined using the pelvic angle gauge (GM drawing 78051–532 incorporated by reference in part 572, Subpart E of this chapter) which is inserted into the H–point gauging hole of the dummy, the angle of the plane of the surface on the lumbar-pelvic adaptor on which the lumbar spine attaches is 23 to 25 degrees from the horizontal, sloping upward toward the front of the vehicle.

(c) *Legs.* The upper legs of each test dummy rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces is 292 mm (11.5 inches). To the extent practicable, both legs of the test dummies in outboard passenger positions are in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S12.1.2(d) for various passenger compartment configurations is permitted.

(d) *Feet.* The feet of the test dummy are placed on the vehicle's toeboard with the heels resting on the floorpan as close as possible to the intersection of the toeboard and floorpan. If the feet cannot be placed flat on the toeboard, they are set perpendicular to the lower legs and placed as far forward as possible so that the heels rest on the floorpan.

S12.1.3 *Positioning a Part 572 Subpart F (SID) dummy in the rear outboard seating positions.*

(a) *Torso.* Hold the dummy's head in place and push laterally on the non-impacted side of the upper torso in a single stroke with a force of 66.7–89.0 N (15–20 lb) towards the impacted side.

(1) For a bench seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and, if possible, the same distance from the vehicle's longitudinal centerline as the midsagittal plane of a test dummy positioned in the driver position under S12.1.1(a)(1). If it is not possible to position the test dummy so that its midsagittal plane is parallel to the vehicle longitudinal centerline and is at this distance from the vehicle's longitudinal centerline, the test dummy is positioned so that some portion of the test dummy just touches, at or above the seat level, the side surface of the vehicle, such as the upper quarter panel, an armrest, or any interior trim (i.e., either the broad trim panel surface or a smaller, localized trim feature).

(2) For a bucket or contoured seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket or contoured seat.

(b) *Pelvis.*

(1) H–point. The H–points of each test dummy coincide within 12.7 mm (½ inch) in the vertical dimension and 12.7 mm (½ inch) in the horizontal dimension of a point that is located 6.4 mm (¼ inch) below the position of the H–point determined by using the equipment for the 50th percentile and procedures specified in SAE J826 (1980) (incorporated by reference; see 49CFR 571.5), except that Table 1 of SAE J826 is not applicable. The length of the lower leg and thigh segments of the H–point machine are adjusted to 414 and 401 mm (16.3 and 15.8 inches), respectively.

(2) Pelvic angle. As determined using the pelvic angle gauge (GM drawing 78051–532 incorporated by reference in part 572, Subpart E of this chapter) which is inserted into the H–point gauging hole of the dummy, the angle of the plane of the surface on the lumbar-pelvic adaptor on which the lumbar spine attaches is 23 to 25 degrees from the horizontal, sloping upward toward the front of the vehicle.

(c) *Legs.* Rest the upper legs of each test dummy against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces is 292 mm (11.5 inches). To the extent practicable, both legs of the test dummies in outboard passenger positions are in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S12.1.3(d) for various passenger compartment configurations is permitted.

(d) *Feet.* Place the feet of the test dummy flat on the floorpan and beneath the front seat as far as possible without front seat interference. If necessary, the distance between the knees may be changed in order to place the feet beneath the seat.

S12.2 *50th percentile male test dummy—49 CFR Part 572 Subpart U (ES–2re).*

S12.2.1 *Positioning an ES–2re dummy in all seating positions.* Position a correctly configured ES–2re test dummy, conforming to the applicable requirements of part 572 of this chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier or pole. Restrain the test dummy using all available belt systems in the seating positions where the belt restraints are provided. Place adjustable belt anchorages at the mid-adjustment position. Retract any folding armrest.

(a) *Upper torso.*

(1) The plane of symmetry of the dummy coincides with the vertical median plane of the specified seating position.

(2) Bend the upper torso forward and then lay it back against the seat back. Set the shoulders of the dummy fully rearward.

(b) *Pelvis.* Position the pelvis of the dummy according to the following:

(1) Position the pelvis of the dummy such that a lateral line passing through the dummy H–points is perpendicular to the longitudinal center plane of the seat. The line through the dummy H–points is horizontal with a maximum inclination of ± 2 degrees. The dummy may be equipped with tilt sensors in the thorax and the pelvis. These instruments can help to obtain the desired position.

(2) The correct position of the dummy pelvis may be checked relative to the H–point of the H–point Manikin by using the M3 holes in the H–point back plates at each side of the ES–2re pelvis. The M3 holes are indicated with ''Hm''. The ''Hm'' position should be in a circle with a radius of 10 mm (0.39 inches) round the H–point of the H–point Manikin.

(c) *Arms.* For the driver seating position and for the front outboard seating position, place the dummy's upper arms such that the angle between the projection of the arm centerline on the mid-sagittal plane of the dummy and the torso reference line is 40° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, 40, and 90 degree settings forward of the spine.

(d) *Legs and Feet.* Position the legs and feet of the dummy according to the following:

(1) For the driver's seating position, without inducing pelvis or torso movement, place the right foot of the dummy on the un-pressed accelerator pedal with the heel resting as far forward as possible on the floor pan. Set the left foot perpendicular to the lower leg with the heel resting on the floor pan in the same lateral line as the right heel. Set the knees of the dummy such that their outside surfaces are 150 ± 10 mm (5.9 ± 0.4 inches) from the plane of symmetry of the dummy. If possible within these constraints, place the thighs of the dummy in contact with the seat cushion.

(2) For other seating positions, without inducing pelvis or torso movement, place the heels of the dummy as far forward as possible on the floor pan without compressing the seat cushion more than the compression due to the weight of the leg. Set the knees of the dummy such that their outside surfaces are 150 ± 10 mm (5.9 ± 0.4 inches) from the plane of symmetry of the dummy.

S12.3 *5th percentile female test dummy—49 CFR Part 572 Subpart V (SID–IIs).* Position a correctly configured 5th percentile female Part 572 Subpart V (SID–IIs) test dummy, conforming to the applicable requirements of part 572 of this chapter, in the front outboard seating position on the side of the test vehicle to be struck by the pole and, for the moving deformable barrier, if the vehicle has a second seat, position a conforming test dummy in the second seat outboard position on the same side of the vehicle (side to be struck) as specified in S12.3.4. Retract any folding armrest. Additional procedures are specified below.

S12.3.1 *General provisions and definitions.*

(a) Measure all angles with respect to the horizontal plane unless otherwise stated.

(b) Adjust the SID–IIs dummy's neck bracket to align the zero degree index marks.

(c) Other seat adjustments. The longitudinal centerline of a bucket seat cushion passes through the SgRP and is

parallel to the longitudinal centerline of the vehicle.

(d) *Driver and passenger manual belt adjustment.* Use all available belt systems. Place adjustable belt anchorages at the nominal position for a 5th percentile adult female suggested by the vehicle manufacturer.

(e) *Definitions.*

(1) The term ''midsagittal plane'' refers to the vertical plane that separates the dummy into equal left and right halves.

(2) The term ''vertical longitudinal plane'' refers to a vertical plane parallel to the vehicle's longitudinal centerline.

(3) The term ''vertical plane'' refers to a vertical plane, not necessarily parallel to the vehicle's longitudinal centerline.

(4) The term ''transverse instrumentation platform'' refers to the transverse instrumentation surface inside the dummy's skull casting to which the neck load cell mounts. This surface is perpendicular to the skull cap's machined inferior-superior mounting surface.

(5) The term ''thigh'' refers to the femur between, but not including, the knee and the pelvis.

(6) The term ''leg'' refers to the lower part of the entire leg including the knee.

(7) The term ''foot'' refers to the foot, including the ankle.

(8) For leg and thigh angles, use the following references:

(i) Thigh—a straight line on the thigh skin between the center of the ½-13 UNC–2B tapped hole in the upper leg femur clamp and the knee pivot shoulder bolt.

(ii) Leg—a straight line on the leg skin between the center of the ankle shell and the knee pivot shoulder bolt.

(9) The term ''seat cushion reference point'' (SCRP) means a point placed on the outboard side of the seat cushion at a horizontal distance between 150 mm (5.9 in) and 250 mm (9.8 in) from the front edge of the seat used as a guide in positioning the seat.

(10) The term ''seat cushion reference line'' means a line on the side of the seat cushion, passing through the seat cushion reference point, whose projection in the vehicle vertical longitudinal plane is straight and has a known angle with respect to the horizontal.

S12.3.2 *5th percentile female driver dummy positioning.*

(a) *Driver torso/head/seat back angle positioning.*

(1) With the seat in the position determined in S10.3.2, use only the control that moves the seat fore and aft to place the seat in the rearmost position. If the seat cushion reference line angle automatically changes as the seat is moved from the full forward position, maintain, as closely as possible, the seat cushion reference line angle determined in S10.3.2.3.3, for the final forward position when measuring the pelvic angle as specified in S12.3.3(a)(11). The seat cushion reference line angle position may be achieved through the use of any seat or seat cushion adjustments other than that which primarily moves the seat or seat cushion fore-aft.

(2) Fully recline the seat back, if adjustable. Install the dummy into the driver's seat, such that when the legs are positioned 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

(3) Bucket seats. Center the dummy on the seat cushion so that its midsagittal plane is vertical and passes through the SgRP within ±10 mm (±0.4 in).

(4) Bench seats. Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned within ±10 mm (±0.4 in) of the center of the steering wheel rim.

(5) Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

(6) Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

(7) Gently rock the upper torso relative to the lower torso laterally in a side to side motion three times through a ± 5 degree arc (approximately 51 mm (2 in) side to side).

(8) If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. Keeping the leg and the thigh in a vertical plane, place the foot in the vertical longitudinal plane that passes through the centerline of the accelerator pedal. Rotate the left thigh outboard about the hip until the center of the knee is the same distance from the midsagittal plane of the dummy as the right knee ± 5 mm (± 0.2 in). Using only the control that moves the seat fore and aft, attempt to return the seat to the full forward position. If either of the dummy's legs first contacts the steering wheel, then adjust the steering wheel, if adjustable, upward until contact with the steering wheel is avoided. If the steering wheel is not adjustable, separate the knees enough to avoid steering wheel contact. Proceed with moving the seat forward until either the leg contacts the vehicle interior or the seat reaches the full forward position. (The right foot may contact and depress the accelerator and/or change the angle of the foot with respect to the leg during seat movement.) If necessary to avoid contact with the vehicle's brake or clutch pedal, rotate the test dummy's left foot about the leg. If there is still interference, rotate the left thigh outboard about the hip the minimum distance necessary to avoid pedal interference. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seat is a power seat, move the seat fore and aft to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. If the steering wheel was moved, return it to the position described in S10.5. If the steering wheel contacts the dummy's leg(s) prior to attaining this position, adjust it to the next higher detent, or if infinitely adjustable, until there is 5 mm (0.2 in) clearance between the wheel and the dummy's leg(s).

(9) For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degree, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to ensure that it is properly installed. If the torso contacts the steering wheel, adjust the steering wheel in the following order until there is no contact: telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments or contact with the steering wheel cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering wheel as adjusted in S10.5. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering wheel as adjusted in S10.5 and the point of contact on the dummy.

(10) If it is not possible to achieve the head level within ± 0.5 degrees, minimize the angle.

(11) Measure and set the dummy's pelvic angle using the pelvic angle gage. The angle is set to 20.0 degrees ± 2.5

degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S12.3.2(a)(9) and (10).

(12) If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forwardmost position, whichever occurs first.

(b) *Driver foot positioning.*

(1) If the vehicle has an adjustable accelerator pedal, adjust it to the full forward position. If the heel of the right foot can contact the floor pan, follow the positioning procedure in S12.3.2(b)(1)(i). If not, follow the positioning procedure in S12.3.2(b)(1)(ii).

(i) Rest the right foot of the test dummy on the un-depressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the leg and then place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot. If the accelerator pedal in the full rearward position still does not touch the foot, leave the pedal in that position.

(ii) Extend the foot and lower leg by decreasing the knee flexion angle until any part of the foot contacts the un-depressed accelerator pedal or the highest part of the foot is at the same height as the highest part of the pedal. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot.

(2) If the ball of the foot does not contact the pedal, increase the ankle plantar flexion angle such that the toe of the foot contacts or is as close as possible to contact with the un-depressed accelerator pedal.

(3) If, in its final position, the heel is off of the vehicle floor, a spacer block is used under the heel to support the final foot position. The surface of the block in contact with the heel has an inclination of 30 degrees, measured from the horizontal, with the highest surface towards the rear of the vehicle.

(4) Place the left foot on the toe-board with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toe-board and floor pan, and not on or in contact with the vehicle's brake pedal, clutch pedal, wheel-well projection or foot rest, except as provided in S12.3.2(b)(6).

(5) If the left foot cannot be positioned on the toe board, place the foot perpendicular to the lower leg centerline as far forward as possible with the heel resting on the floor pan.

(6) If the left foot does not contact the floor pan, place the foot parallel to the floor and place the leg perpendicular to the thigh as possible. If necessary to avoid contact with the vehicle's brake pedal, clutch pedal, wheel-well, or foot rest, use the three foot position adjustments listed in S12.3.2(b)(1)(i)–(ii). The adjustment options are listed in priority order, with each subsequent option incorporating the previous. In making each adjustment, move the foot the minimum distance necessary to avoid contact. If it is not possible to avoid all prohibited foot contact, priority is given to avoiding brake or clutch pedal contact:

(i) Rotate (abduction/adduction) the test dummy's left foot about the lower leg;

(ii) Planar flex the foot;

(iii) Rotate the left leg outboard about the hip.

(c) *Driver arm/hand positioning.*

(1) Place the dummy's upper arm such that the angle between the projection of the arm centerline on the midsagittal plane of the dummy and the torso reference line is 40° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, ± 40, ± 90, ± 140, and 180 degree settings where positive is forward of the spine.

(2) [Reserved.]

S12.3.3 *5th percentile female front passenger dummy positioning*

(a) *Passenger torso/head/seat back angle positioning.*

(1) With the seat at the mid-height in the full-forward position determined in S10.3.2, use only the control that primarily moves the seat fore and aft to place the seat in the rearmost position, without adjusting independent height controls. If the seat cushion reference angle automatically changes as the seat is moved from the full forward position, maintain, as closely as possible, the seat cushion reference line angle determined in S10.3.2.3.3, for the final forward position when measuring the pelvic angle as specified in S12.3.3(a)(11). The seat cushion reference line angle position may be achieved through the use of any seat or seat cushion adjustments other than that which primarily moves the seat or seat cushion fore-aft.

(2) Fully recline the seat back, if adjustable. Place the dummy into the passenger's seat, such that when the legs are positioned 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

(3) Bucket seats. Place the dummy on the seat cushion so that its midsagittal plane is vertical and passes through the SgRP within ± 10 mm (± 0.4 in).

(4) Bench seats. Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within + 10 mm (± 0.4 in), as the midsagittal plane of the driver dummy.

(5) Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

(6) Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

(7) Gently rock the upper torso relative to the lower torso laterally in a side to side motion three times through a ± 5 degree arc (approximately 51 mm (2 in) side to side).

(8) If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. With the feet perpendicular to the legs, place the heels on the floor pan. If a heel will not contact the floor pan, place it as close to the floor pan as possible. Using only the control that primarily moves the seat fore and aft, attempt to return the seat to the full forward position. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seats are power seats, position the seat to avoid contact while assuring that there is a

maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

(9) For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degree, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to ensure that it is properly installed.

(10) If it is not possible to achieve the head level within ± 0.5 degrees, minimize the angle.

(11) Measure and set the dummy's pelvic angle using the pelvic angle gage. The angle is set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S12.3.3(a)(9) and (10).

(12) If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forwardmost position, whichever occurs first.

(b) *Passenger foot positioning.*

(1) Place the front passenger's feet flat on the toe board.

(2) If the feet cannot be placed flat on the toe board, set them perpendicular to the leg center lines and place them as far forward as possible with the heels resting on the floor pan.

(3) Place the rear seat passenger's feet flat on the floor pan and beneath the front seat as far as possible without front seat interference.

(c) *Passenger arm/hand positioning.* Place the dummy's upper arm such that the angle between the projection of the arm centerline on the mid-sagittal plane of the dummy and the torso reference line is 40° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, ± 40, ± 90, ± 140, and 180 degree settings where positive is forward of the spine.

S12.3.4 *5th percentile female in rear outboard seating positions.*

(a) Set the rear outboard seat at the full rearward, full down position determined in S8.3.3.

(b) Fully recline the seat back, if adjustable. Install the dummy into the passenger's seat, such that when the legs are 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

(c) Place the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seating position SgRP within ± 10 mm (± 0.4 mm).

(d) Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

(e) Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

(f) Gently rock the upper torso laterally side to side three times through a ± 5 degree arc (approximately 51 mm (2 in) side to side).

(g) If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. With the feet perpendicular to the legs, place the heels on the floor pan. If a heel will not contact the floor pan, place it as close to the floor pan as possible.

(h) For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to insure that it is properly installed.

(i) If it is not possible to orient the head level within ± 0.5 degrees, minimize the angle.

(j) Measure and set the dummy's pelvic angle using the pelvic angle gauge. The angle is set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible, as specified in S12.3.4(h) and (i).

(k) *Passenger foot positioning.*

(1) Place the passenger's feet flat on the floor pan.

(2) If the either foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible.

(l) *Passenger arm/hand positioning.* Place the rear dummy's upper arm such that the angle between the projection of the arm centerline on the midsagittal plane of the dummy and the torso reference line is 0° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, ± 40, ± 90, ± 140, and 180 degree settings where positive is forward of the spine.

S13 *Phase-in of moving deformable barrier and vehicle-to-pole performance requirements for vehicles manufactured on or after September 1, 2009 and before September 1, 2012.*

S13.1 *Vehicles manufactured on or after September 1, 2009 and before September 1, 2012.* At anytime during the production years ending August 31, 2012 and August 31, 2013, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the moving deformable barrier test with advanced test dummies (S7.2) and vehicle-to-pole test requirements (S9.2) of this standard. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

S13.1.1 *Vehicles manufactured on or after September 1, 2009 and before September 1, 2010.* Subject to S13.4, for vehicles manufactured on or after September 1, 2009 and before September 1, 2010, the number of vehicles complying with S7.2 and S9.2 shall be not less than 20 percent of:

(a) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(b) The manufacturer's production in the current production year.

S13.1.2 *Vehicles manufactured on or after September 1, 2010 and before September 1, 2011.* Subject to S13.4, for vehicles manufactured on or after September 1, 2010 and before September 1, 2011, the number of vehicles complying with S7.2 and S9.2 shall be not less than 50 percent of:

(a) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(b) The manufacturer's production in the current production year.

S13.1.3 *Vehicles manufactured on or after September 1, 2011 and before September 1, 2012.* Subject to S13.4, for vehicles manufactured on or after September 1, 2011 and before September 1, 2012, the number of vehicles complying with S7.2 and S9.2 shall be not less than 75 percent of:

(a) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(b) The manufacturer's production in the current production year.

S13.2 *Vehicles produced by more than one manufacturer.*

S13.2.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S13.1.1 and S13.1.2, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S13.2.2.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S13.2.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S13.2.1.

S13.3 For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S13.1.1 and S13.1.2, do not count any vehicle that is excluded by Standard No. 214 from the moving deformable barrier test with the ES–2re or SID–IIs test dummies (S7.2) or from the vehicle-to-pole test requirements.

S13.4 *Calculation of complying vehicles.*

(a) For the purposes of calculating the vehicles complying with S13.1.1, a manufacturer may count a vehicle if it is manufactured on or after October 11, 2007, but before September 1, 2010.

(b) For purposes of complying with S13.1.2, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after October 11, 2007, but before September 1, 2011 and,

(2) Is not counted toward compliance with S13.1.1.

(c) For purposes of complying with S13.1.3, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after October 11, 2007, but before September 1, 2012 and,

(2) Is not counted toward compliance with S13.1.1 or S13.1.2.

(c) For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer, each vehicle that is excluded from having to meet the applicable requirement is not counted.

■ 4. Section 571.301 is amended by revising S6.3(b) and S7.2(b), to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

S6.3 *Side moving barrier crash.*

* * *

(b) *Vehicles manufactured on or after September 1, 2004.* When the vehicle is impacted laterally on either side by a moving deformable barrier at 53 ± 1.0 km/h with 49 CFR part 572, subpart F test dummies at positions required for testing by S7.1.1 of Standard 214, under the applicable conditions of S7 of this standard, fuel spillage shall not exceed the limits of S5.5 of this standard.

* * * * *

S7.2 *Side moving barrier test conditions.* * * *

(b) *Vehicles manufactured on or after September 1, 2004.* The side moving deformable barrier crash test conditions are those specified in S8 of Standard 214 (49 CFR 571.214).

■ 5. Section 571.305 is amended by revising S6.3 and S7.5, to read as follows:

§ 571.305 Standard No. 305; Electric-powered vehicles: electrolyte spillage and electrical shock protection.

* * * * *

S6.3 *Side moving deformable barrier impact.* The vehicle must meet the requirements of S5.1, S5.2, and S5.3 when it is impacted from the side by a barrier that conforms to part 587 of this chapter that is moving at any speed up to and including 54 km/h, with 49 CFR part 572, subpart F test dummies positioned in accordance with S7 of Sec. 571.214 of this chapter.

* * * * *

S7.5 *Side moving deformable barrier impact test conditions.* In addition to the conditions of S7.1 and S7.2, the conditions of S8 of Sec. 571.214 of this chapter apply to the conduct of the side moving deformable barrier impact test specified in S6.3.

* * * * *

PART 585—PHASE–IN REPORTING REQUIREMENTS

■ 6. The authority citation for part 585 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 7. Part 585 is amended by adding Subpart H to read as follows:

Subpart H—Side Impact Protection Phase-in Reporting Requirements

Sec.

Subpart H—Side Impact Protection Phase-in Reporting Requirements

§ 585.71 Scope.

This part establishes requirements for manufacturers of passenger cars, and of trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or less, to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the moving deformable barrier test requirements of S7 of Standard No. 214, *Side impact protection* (49 CFR 571.214), and the vehicle-to-pole test requirements of S9 of that standard.

§ 585.72 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the requirements of Standard No. 214, *Side Impact Protection* (49 CFR 571.214).

§ 585.73 Applicability.

This part applies to manufacturers of passenger cars, and of trucks, buses and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less. However, this part does not apply to vehicles excluded by S2 and S5 of Standard No. 214 (49 CFR 571.214) from the requirements of that standard.

§ 585.74 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) *Bus, gross vehicle weight rating* or *GVWR, multipurpose passenger vehicle, passenger car,* and *truck* are used as defined in § 571.3 of this chapter.

(c) *Production year* means the 12-month period between September 1 of

one year and August 31 of the following year, inclusive.

(d) *Limited line manufacturer* means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

§ 585.75 Response to inquiries.

At anytime during the production years ending August 31, 2010, and August 31, 2013, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the moving deformable barrier and vehicle-to-pole tests of FMVSS No. 214 (49 CFR 571.214). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.76 Reporting requirements

(a) *Advanced credit phase-in reporting requirements.* (1) Within 60 days after the end of the production years ending August 31, 2008, and August 31, 2009, each manufacturer choosing to certify vehicles manufactured during any of those production years as complying with the upgraded moving deformable barrier (S7.2 of Standard No. 214)(49 CFR 571.214) or vehicle-to-pole requirements (S9) of Standard No. 214 shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

(b) *Phase-in reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 2010, August 31, 2011, and August 31, 2012, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the moving deformable barrier requirements of S7 of Standard No. 214 and with the vehicle-to-pole requirements of S9 of that Standard for its vehicles produced in that year. Each report shall provide the information specified in paragraph (c) of this section and in section 585.2 of this part.

(c) *Advanced credit phase-in report content*—(1) *Production of complying vehicles.* With respect to the reports identified in § 585.76(a), each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that are certified as meeting the moving deformable barrier test requirements of S7.2 of Standard No. 214, *Side impact protection* (49 CFR 571.214), and the vehicle-to-pole test requirements of S9 of that standard.

(d) *Phase-in report content*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(2) *Production of complying vehicles.* Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that vehicles produced during the preceding years are treated under Standard No. 214 as having been produced during the production year being reported on, information on the number of passenger vehicles that meet the moving deformable barrier test requirements of S7 of Standard No. 214, *Side Impact Protection* (49 CFR 571.214), and the vehicle-to-pole test requirements of S9 of that standard.

§ 585.77 Records

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.76 until December 31, 2016.

Issued on: August 30, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. 07–4360 Filed 9–5–07; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2863/P.L. 110–75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the ''Willye B. White Post Office Building''. (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the ''Staff Sergeant Omer T. 'O.T.' Hawkins Post Office''. (Aug. 9, 2007; 121 Stat. 570)

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